

MT LEGISLATIVE HISTORY

Chapter 801 1991

Bill H _____ S 199

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 20 ☒ C

Hearing Date(s) Feb 06 ☒ C

Mar 21 ☒ C

Feb 07 ☒ C

_____ ☐ C

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Date Out Mar 21 ☒ C

Feb 08 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Note: A Free Conference Committee was appointed, but its minutes were not recorded.

2/12	FIRST READING		
2/12	REFERRED TO JUDICIARY		
3/20	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	91	0
3/25	3RD READING CONCURRED	94	1
RETURNED TO SENATE			
3/28	SIGNED BY PRESIDENT		
4/01	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 328		
		EFFECTIVE DATE: 4/04/91	

SB 199 INTRODUCED BY B. BROWN, ET AL.

AMEND HOUSING DISCRIMINATION LAWS
TO CONFORM TO FEDERAL LAW

BY REQUEST OF COMMISSION FOR HUMAN RIGHTS

1/25	INTRODUCED		
1/25	REFERRED TO JUDICIARY		
1/25	FIRST READING		
1/25	FISCAL NOTE REQUESTED		
1/30	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/06	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	48	0
2/12	3RD READING PASSED	47	1
TRANSMITTED TO HOUSE			
2/13	FIRST READING		
2/13	REFERRED TO JUDICIARY		
3/20	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED		
4/05	2ND READING CONCURRED AS AMENDED	83	12
4/06	3RD READING CONCURRED	89	9
RETURNED TO SENATE WITH AMENDMENTS			
4/09	2ND READING AMENDMENTS NOT CONCURRED	45	0
4/16	CONFERENCE COMMITTEE APPOINTED		
4/22	CONFERENCE COMMITTEE DISSOLVED		
4/22	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/24	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	49	0
4/24	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	48	1
HOUSE			
4/18	CONFERENCE COMMITTEE APPOINTED		
4/23	CONFERENCE COMMITTEE DISSOLVED		
4/23	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/24	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	85	15
4/25	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	87	13
4/30	SIGNED BY PRESIDENT		
5/03	SIGNED BY SPEAKER		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 801		
		EFFECTIVE DATE: 10/01/91	

SB 200 INTRODUCED BY VAUGHN, ET AL.

REVISE LICENSING-RECORDKEEPING-TRAINING REQUIREMENTS

SENATE BILL NO. 199

INTRODUCED BY B. BROWN, YELLOWTAIL, J. RICE, STRIZICH
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

IN THE SENATE

JANUARY 25, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 9, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	PRINTING REPORT.
FEBRUARY 11, 1991	SECOND READING, DO PASS.
FEBRUARY 12, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 12, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 13, 1991	FIRST READING.
MARCH 21, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 5, 1991	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 6, 1991	THIRD READING, CONCURRED IN. AYES, 89; NOES, 8.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1991	RECEIVED FROM HOUSE.
APRIL 9, 1991	SECOND READING, AMENDMENTS NOT CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED.

APRIL 16, 1991

CONFERENCE COMMITTEE APPOINTED.

IN THE HOUSE

APRIL 18, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 22, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 23, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 24, 1991

FREE CONFERENCE COMMITTEE REPORTED.

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 25, 1991

FREE CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 25, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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SENATE BILL NO. 199
INTRODUCED BY Bob Brown
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE HOUSING DISCRIMINATION LAWS TO MAKE THEM SUBSTANTIALLY EQUIVALENT TO FEDERAL DISCRIMINATION LAW; PROVIDING PROCEDURES AND REMEDIES FOR ENFORCEMENT OF HOUSING DISCRIMINATION LAWS; PROHIBITING INTIMIDATION OR INTERFERENCE IN THE RIGHT TO BE FREE FROM HOUSING DISCRIMINATION; PROVIDING PENALTIES; AND AMENDING SECTIONS 49-2-305, 49-2-501, 49-2-503, 49-2-506, 49-2-509, 49-3-304, 49-3-306, AND 49-4-212, MCA."

WHEREAS, the Legislature has previously included housing discrimination as a subject of discrimination law in the Montana Human Rights Act; and

WHEREAS, the housing discrimination laws in the Montana Human Rights Act were modeled after the federal Fair Housing Act of 1968; and

WHEREAS, in 1988, Congress substantially amended the federal Fair Housing Act, enforced by the Department of Housing and Urban Development; and

WHEREAS, the Montana Commission for Human Rights processes housing discrimination complaints in Montana that allege a violation of both the Montana Human Rights Act and

1 the federal Fair Housing Act; and

2 WHEREAS, the Montana Commission for Human Rights
3 receives a substantial portion of its funding from contracts
4 with the Department of Housing and Urban Development for
5 processing federal housing discrimination cases; and

6 WHEREAS, after January 13, 1992, the Department of
7 Housing and Urban Development will no longer contract with
8 any state fair housing agency that does not enforce a state
9 law providing rights and remedies substantially equivalent
10 to those provided by the federal Fair Housing Act; and

11 WHEREAS, the rights and remedies provided by the Montana
12 Human Rights Act are not presently substantially equivalent
13 to those provided by the federal Fair Housing Act.

14 THEREFORE, it is appropriate for the Legislature to
15 amend the housing discrimination laws in the Montana Human
16 Rights Act to maintain substantial equivalency with the
17 federal Fair Housing Act.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 49-2-305, MCA, is amended to read:

21 "49-2-305. Discrimination in housing -- exemptions. (1)
22 Except when the distinction is based on reasonable grounds,
23 it is an unlawful discriminatory practice for the owner,
24 lessee, manager, or other person having the right to sell,
25 lease, or rent a housing accommodation or improved or

unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

~~{c}--to--make--a--written--or--oral--inquiry--or--record--of--the--sex,--race,--creed,--religion,--age,--physical--or--mental--handicap,--color,--or--national--origin--of--a--person--seeking--to--buy,--lease,--or--rent--the--housing--accommodation--or--property, or~~

~~{d}{c}~~ to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin;

(d) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin when the housing accommodation or property is in fact available; or

(e) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental handicap of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental handicap includes:

(a) refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and

construct the housing accommodation in a manner that:

(A) makes the public use and common use portions of the housing accommodation readily accessible to and usable by handicapped persons;

(B) provides doors designed to allow passage into and within all premises within the housing accommodation sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual in a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

1 (6) For purposes of subsection (5), the term "covered
2 multifamily housing accommodation" means:

3 (a) a building consisting of four or more dwelling
4 units if the building has one or more elevators; and

5 (b) ground floor units in a building consisting of four
6 or more dwelling units.

7 (7) (a) It is an unlawful discriminatory practice for
8 any person or other entity whose business includes engaging
9 in residential real estate-related transactions to
10 discriminate because of sex, race, creed, religion, age,
11 familial status, physical or mental handicap, color, or
12 national origin against a person in making available a
13 transaction or in the terms or conditions of a transaction.

14 (b) For purposes of this subsection (7), the term
15 "residential real estate-related transaction" means any of
16 the following:

17 (i) the making or purchasing of loans or providing
18 other financial assistance:

19 (A) for purchasing, constructing, improving, repairing,
20 or maintaining a housing accommodation or property; or

21 (B) secured by residential real estate; or
22 (ii) the selling, brokering, or appraising of
23 residential real property.

24 (8) It is an unlawful discriminatory practice to deny a
25 person access to or membership or participation in a

1 multiple-listing service; real estate brokers' organization;
2 or other service, organization, or facility relating to the
3 business of selling, leasing, or renting housing
4 accommodations or property or to discriminate against the
5 person in the terms or conditions of access, membership, or
6 participation because of sex, race, creed, religion, age,
7 familial status, physical or mental handicap, color, or
8 national origin.

9 (9) It is an unlawful discriminatory practice to
10 coerce, intimidate, threaten, or interfere with a person in
11 the exercise or enjoyment of or because of his having
12 exercised or enjoyed or having aided or encouraged any other
13 person in the exercise or enjoyment of a right granted or
14 protected by this section.

15 {4}(10) The prohibitions of this section against
16 discrimination because of age and familial status do not
17 extend to housing for older persons. "Housing for older
18 persons" means housing:

19 (a) provided under any state or federal program
20 specifically designed and operated to assist elderly
21 persons;

22 (b) intended for, and solely occupied by, persons 62
23 years of age or older; or

24 (c) intended and operated for occupancy by at least one
25 person 55 years of age or older per unit in accordance with

the provisions of 42 U.S.C. 3605(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

~~(5)~~(11) The prohibitions of this section against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

~~(6)~~(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

NEW SECTION. Section 2. Procedures and remedies for enforcement of housing discrimination laws. (1) (a) Except as provided in subsection (1)(b), if the commission, in a hearing under 49-2-505, finds that a person, institution, entity, or agency against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the remedies provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(i) in an amount not exceeding \$10,000 if the respondent has not been found to have committed any prior

discriminatory housing practice in violation of 49-2-305;

(ii) in an amount not exceeding \$25,000 if the respondent has been found to have committed one other discriminatory housing practice in violation of 49-2-305 during the 5-year period ending on the date of the filing of the complaint; and

(iii) in an amount not exceeding \$50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.

(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (1)(a)(ii) and (1)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.

(2) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially

1 reviewed, no later than 30 days after the order is in
2 substance affirmed:

3 (a) send copies of the findings of fact, the
4 conclusions of law, and the order to the licensing or
5 regulatory agency; and

6 (b) recommend to the licensing or regulatory agency
7 appropriate disciplinary action, including, where
8 appropriate, the suspension or revocation of the license of
9 the respondent.

10 (3) (a) When a complaint is filed under 49-2-305, a
11 complainant, respondent, or aggrieved person on whose behalf
12 the complaint was filed may elect to have the claims decided
13 in a civil action in lieu of a hearing under 49-2-505. The
14 election must be made no later than 20 days after receipt by
15 the electing person of service of notice of certification
16 for hearing under 49-2-505. The person making the election
17 shall give notice to the commission and to all other
18 complainants and respondents to whom the complaint relates.
19 Within 30 days after the election is made, the commission
20 shall commence a civil action in an appropriate district
21 court on behalf of the aggrieved person if the commission
22 staff has made a finding that the allegations of the
23 complaint are supported by substantial evidence. If the
24 commission staff has made a finding that the allegations of
25 the complaint are not supported by substantial evidence, the

1 complainant may commence a civil action in an appropriate
2 district court in accordance with subsection (4). An
3 aggrieved person with respect to the issues to be determined
4 in a civil action brought by the commission staff may
5 intervene in the action.

6 (b) The commission may not continue administrative
7 proceedings on a complaint after an election is made in
8 accordance with subsection (3)(a).

9 (4) (a) An aggrieved person may commence a civil action
10 in an appropriate district court within 2 years after an
11 alleged unlawful discriminatory practice under 49-2-305
12 occurred or was discovered or within 2 years of the breach
13 of a conciliation agreement entered into under 49-2-504 in a
14 case alleging a violation of 49-2-305. The computation of
15 the 2-year period does not include any time during which an
16 administrative proceeding under this title was pending with
17 respect to a complaint alleging a violation of 49-2-305. The
18 tolling of the time limit for commencing a civil action does
19 not apply to actions arising from breach of a conciliation
20 agreement.

21 (b) An aggrieved person may commence a civil action
22 under this subsection for a violation of 49-2-305 whether or
23 not a complaint has been filed under 49-2-501 and without
24 regard to the status of a complaint filed with the
25 commission except as provided in subsection (4)(d). If the

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1 commission has obtained a conciliation agreement with the
2 consent of the aggrieved person, an action may not be filed
3 under this subsection by the aggrieved person regarding the
4 alleged violation of 49-2-305 that forms the basis for the
5 complaint except for the purpose of enforcing the terms of
6 the agreement.

7 (c) The commission may not continue administrative
8 proceedings on a complaint after the beginning of a trial of
9 a civil action commenced by the aggrieved party under this
10 subsection (4) seeking relief with respect to the same
11 alleged violation of 49-2-305.

12 (d) An aggrieved person may not commence a civil action
13 under this subsection (4) with respect to an alleged
14 violation of 49-2-305 if the commission has commenced a
15 hearing on the record under 49-2-505 regarding the same
16 complaint.

17 (e) Upon application by a person alleging a violation
18 of 49-2-305 in a civil action under this subsection (4) or
19 by a person against whom the violation is alleged, the court
20 may:

21 (i) appoint an attorney for the applicant; or

22 (ii) authorize the commencement or continuation of a
23 civil action without the payment of fees, costs, or security
24 if, in the opinion of the court, the applicant is
25 financially unable to bear the costs of the civil action.

1 (f) Upon timely application, the commission may
2 intervene in a civil action brought under this subsection
3 (4) if the commission certifies that the case is of general
4 public importance. Upon intervention, the commission may
5 obtain the same relief that would be available to the
6 commission under subsection (6).

7 (5) If the court finds that a person, institution,
8 entity, or agency against whom a complaint was filed under
9 this section has engaged in a discriminatory practice in
10 violation of 49-2-305, the court may, in addition to the
11 other remedies provided under 49-2-506, award punitive
12 damages. The court may also award attorney fees to the
13 prevailing party.

14 (6) (a) Whenever the commission has reasonable cause to
15 believe that a person or group of persons is engaged in a
16 pattern or practice in violation of 49-2-305 or that a group
17 of persons has been discriminated against in violation of
18 49-2-305 and the denial raises an issue of general public
19 importance, the commission may commence a civil action in an
20 appropriate district court. The commission may also commence
21 a civil action in any appropriate district court for relief
22 regarding breach of a conciliation agreement in a case
23 regarding an alleged violation of 49-2-305 if the commission
24 is a party to the agreement.

25 (b) The commission may file a civil action under this

subsection (6) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.

(c) In a civil action under this subsection (6), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:

(i) in an amount not exceeding \$50,000 for a first violation; and

(ii) in an amount not exceeding \$100,000 for any subsequent violation.

(d) Upon timely application, a person may intervene in a civil action under this subsection (6) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.

(7) Civil penalties under this section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement.

Section 3. Section 49-2-501, MCA, is amended to read:

"49-2-501. Filing complaints. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or

governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) (a) Except as provided in subsection (2)(b), a complaint under this chapter must be filed with the commission within ~~180~~-days 1 year after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within ~~180~~-days 1 year after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within ~~300~~ 485 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein may not be considered by the commission."

Section 4. Section 49-2-503, MCA, is amended to read:

"49-2-503. Temporary relief by court order. (1) At any

time after a complaint is filed under this chapter alleging an-unlawful-discriminatory-practice,-the-commission-may-file a--petition-in-the-district-court-in-the-county-in-which-the subject-of-the-complaint-occurs-or-in-the-county-in-which--a respondent-resides-or-transacts-business-seeking-appropriate temporary--relief--against-this-practice,-including-an-order restraining-the-respondent-from-interfering--in--any--manner with--an--order-the-commission-may-enter-with-respect-to-the complaint-

{2}--The-court-has-the--power--to--grant--the--temporary relief--or--restraining--order-it-considers-just-and-proper. However,-no-relief-or-order-extending-beyond-14-days-may--be granted--except--by--consent--of--the--respondent--or-upon-a finding-by-the-court--that--there--is--reasonable--cause--to believe--that--the--respondent-has-engaged-in-discriminatory practices, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

Section 5. Section 49-2-506, MCA, is amended to read:

"49-2-506. Procedure upon a finding of discrimination.

(1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the

complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The Except as provided in [section 2], the order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years."

Section 6. Section 49-2-509, MCA, is amended to read:

"49-2-509. Filing a complaint in district court. (1) Except as provided in subsection (2) or with respect to complaints alleging a violation of 49-2-305, the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

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1 (b) 12 months have elapsed since the complaint was
2 filed.

3 (2) The commission staff may refuse to permit removal
4 of a case to district court if:

5 (a) the party requesting removal fails to comply with
6 the terms of a lawful subpoena issued in the investigative
7 process;

8 (b) the party requesting removal has waived the right
9 to request removal to the district court;

10 (c) more than 30 days have elapsed since service of
11 notice of hearing under 49-2-505, unless the commission
12 fails to schedule a hearing to be held within 90 days of
13 service of notice of hearing; or

14 (d) the party requesting removal has unsuccessfully
15 attempted through court litigation to prevent the commission
16 staff from investigating the complaint.

17 (3) The commission staff may dismiss a complaint filed
18 under 49-2-501 and allow the complainant to file a
19 discrimination action in district court if:

20 (a) the commission staff determines that the commission
21 lacks jurisdiction over the complaint;

22 (b) the complainant fails to cooperate in the staff's
23 investigation of the complaint or fails to keep the
24 commission advised of changes of address; or

25 (c) the commission staff determines that the

1 allegations of the complaint are not supported by
2 substantial evidence.

3 (4) A decision of the commission staff to dismiss a
4 complaint or to refuse to permit removal to the district
5 court is final unless a party seeks review by filing
6 objections within 14 days after the decision is served on
7 him. The commission shall review the decision in informal
8 proceedings under 2-4-604, except that 2-4-604(5) applies
9 only to review of a refusal to permit removal.

10 (5) Within 90 days after receipt of a notice of
11 dismissal under subsection (3) or an order under subsection
12 (4) of affirmance of a dismissal, whichever occurs later, or
13 of a letter issued under subsection (1), the complainant may
14 petition the district court in the district in which the
15 alleged violation occurred for appropriate relief. If Except
16 as provided in [section 2], if the claimant fails to
17 petition the district court within 90 days after receipt of
18 the letter, notice, or order issued by the commission staff,
19 the claim shall be barred.

20 (6) If the district court finds, in an action under
21 this section, that a person, institution, entity, or agency
22 against whom or which a complaint was filed has engaged in
23 the unlawful discriminatory practice alleged in the
24 complaint, the court may provide the same relief as
25 described in 49-2-506 for a commission order. In addition,

the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."

Section 7. Section 49-3-304, MCA, is amended to read:

"49-3-304. Filing complaints. (1) Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within ~~180 days~~ 1 year after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within ~~180 days~~ 1 year after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within ~~300~~ 485

days after the alleged unlawful discriminatory practice occurred or was discovered.

(3) A complaint not filed within the times set forth in this section may not be considered by the commission."

Section 8. Section 49-3-306, MCA, is amended to read:

"49-3-306. Temporary relief by court order. (1) At any time after a complaint is filed with the commission under this chapter ~~alleging an unlawful discriminatory practice,~~ ~~the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business,~~ ~~seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.~~

(2) ~~The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for~~

preliminary injunctions in civil actions."

NEW SECTION. Section 9. Intimidation or interference

in the right to be free from housing discrimination -- penalties. (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because he is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons

opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because he is or has been, or in order to discourage him or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because he is or has lawfully participated in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life.

Section 10. Section 49-4-212, MCA, is amended to read:

"49-4-212. Access to housing accommodations. {1} Blind, visually handicapped, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

{2}--Nothing--in-this-section-requires-a-person-renting,

1 leasing,--or--providing--real--property--for--compensation--to
2 modify-his-property-in-any-way-or-provide-a-higher-degree-of
3 care-for-a-blind,-visually-handicapped,-or-deaf-person--than
4 for-a-person-who-is-not-so-disabled."

5 NEW SECTION. **Section 11.** Codification instruction. (1)

6 [Section 2] is intended to be codified as an integral part
7 of Title 49, chapter 2, part 5, and the provisions of Title
8 49, chapter 2, part 5, apply to [section 2].

9 (2) [Section 9] is intended to be codified as an
10 integral part of Title 49, chapter 2, part 6, and the
11 provisions of Title 49, chapter 2, part 6, apply to [section
12 9].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0199, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to: amend the housing discrimination laws to make them substantially equivalent to federal discrimination law; provide procedures and remedies for enforcement of housing discrimination laws; prohibit intimidation or interference in the right to be free from housing discrimination; and provide penalties.

ASSUMPTIONS:

1. The state will remain eligible to receive federal grants from the US Department of Housing and Urban Development after September 30, 1991, as a result of the proposed bill.
2. The current level executive budget has federal revenue of \$18,625 in FY92 and \$23,500 in FY93 which would be replaced with general fund in the Human Rights Commission if the state law were not substantially equivalent to federal law.
3. Therefore, for purposes of showing the impact, the executive budget is used under "proposed law" below and "current law" shows the general fund increase without enactment of SB0199.
4. Changes in workload will be minimal and have no fiscal impact.
5. The proposed bill will enable the commission to be eligible for educational and other grants from HUD in the future.
6. Civil penalty revenues will be accumulated for at least one biennium before any significant fund balance would be available for appropriation. There is insufficient information at this time to estimate the amount of penalty collections.

FISCAL IMPACT:Expenditures:

	FY92			FY93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Human Rights Comm.</u>						
FTE	9.00	9.00	0.00	9.00	9.00	0.00
Personal Services	267,306	267,306	0	267,462	267,462	0
Operating Expenses	108,064	108,064	0	108,488	108,488	0
Equipment	4,000	4,000	0	4,000	4,000	0
Total	379,370	379,370	0	379,950	379,950	0
<u>Funding:</u>						
General Fund (01)	295,134	276,509	(18,625)	300,590	277,090	(23,500)
Federal Funds (03)	84,236	102,861	18,625	79,360	102,860	23,500
Total	379,370	379,370	0	379,950	379,950	0

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Some amount of penalty revenue may be available for appropriation in the 1995 biennium. The amount of penalties collected over the 1993 biennium can not be estimated at this time.

ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

Bob Brown
BOB BROWN, PRIMARY SPONSOR

DATE

Fiscal Note for SB0199, as introduced.

SB 199

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

SECRETARY--JOANN BIRD

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0125 BROWN, BOB	1/18	1/23	REQUIRE LOAN AND CREDIT AGREEMENTS TO BE IN WRITING TO BE ENFORCEABLE	PASS AS AMENDED		1/28
SB0138 STIMATZ, LAWRENCE	1/18	1/31	WORKFORCE DRUG TESTING ACT	TABLED ON 02/23		
SB0140 WATERMAN, MIGNON	1/18	1/25	INCLUDE ANABOLIC STEROIDS AS A SCHEDULE III DRUG	PASS AS AMENDED		1/28
SB0145 BROWN, BOB	1/18	1/24	ALLOW NEW TYPE OF GAMBLING ONLY BY VOTE OF THE PEOPLE	ADVERSE RPT ADOPT		2/23
SB0153 TOWE, TOM	1/21	1/29	REVISE COLLATERAL SOURCE RULE	ADVERSE RPT ADOPT		2/06
SB0154 NATHE, DENNIS	1/22	2/01	2/13 CLARIFY LEGISLATIVE IMMUNITY	PASS AS AMENDED		2/16
SB0170 VAUGHN, ELEANOR	1/22	1/29	SEXUAL OFFENDER PAY FOR EVALUATION; ESTABLISH QUALIFICATIONS OF EVALUATORS	PASS AS AMENDED		1/31
SB0190 WEEDING, CECIL	1/23	1/31	2/6 REVISE METHOD OF ENFORCEMENT AND PENALTIES FOR UNFAIR TRADE PRACTICES	PASS AS AMENDED		2/09
SB0196 BECK, TOM	1/25	2/01	PROVIDE FOR CONFINEMENT OF INMATES WHEN INSTITUTION'S CAPACITY EXCEEDED	PASS AS AMENDED		2/05
SB0198 BROWN, BOB	1/25	2/06	CORRECT HOUSING DISCRIMINATION CITATION ERROR	DO PASS		2/07
SB0199 BROWN, BOB	1/25	2/06	2/15- statute of limitations AMEND HOUSING DISCRIMINATION LAWS TO CONFORM TO FEDERAL LAW	PASS AS AMENDED		2/09

19

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 6, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 71

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, District 41, told the Committee HB 71 is part of a package of bills from the interim committee on juvenile detention. He said the bill enhances current law by requiring that those who are incarcerated pay for the cost of incarceration if they have the ability to do so.

Representative Strizich explained that such things as lack of funding for and recreation at incarceration facilities are two of the costs which could be met by this bill. He stated there is a "logical connection" between space available and paying for cost of incarceration. Representative Strizich advised the Committee the

advised the Committee that in the 1987 discrimination bill, the Legislature recognized the value of discrimination in preventing families with children from living in housing designed specifically for older persons, but the wrong code is referred to in that legislation. He said that part of the code has been corrected, and that it also contains a retroactivity clause.

Proponents' Testimony:

There were no proponents.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

There were no questions.

Closing by Sponsor:

Senator Brown made no closing comments.

HEARING ON SENATE BILL 199

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, District 2, told the Committee SB 199 was also drafted at the request of the Human Rights Commission. He stated that about ten years ago, Montana began a cooperative effort with the federal Fair Housing Development. He explained that in 1988 the federal Fair Housing Act was amended by Congress and that Montana needs to be brought into compliance by January 1992.

Senator Brown stated there are substantial changes on pages 3-7, and that procedural changes reflect 1988 federal changes.

Proponents' Testimony:

Anne MacIntyre, Administrator, Human Rights Commission (HRC), provided committee members with written testimony in support of SB 199 (Exhibit #2). She said the bill makes provision for handicapped persons; prohibits blockbusting; prohibits discrimination in real estate transactions and the real estate industry; prohibits coercion and intimidation on the basis of race, sex, etc.; and prohibits criminal acts.

Ms. MacIntyre said subsection (c) of 49-2-305, MCA is repealed, as there can be valid reasons for making inquiry for records, such as real estate industry marketing. She advised the Committee that the bill allows the HRC to set penalties, the funds from which are to be placed in an ear-marked revenue account. Ms. MacIntyre further advised the Committee that the statute of

limitations for filing complaints has been changed from 180 days to one year.

Ms. MacIntyre stated the HRC is seeking these changes to remain substantially equivalent with HUD (federal Housing and Urban Development), and to continue receiving \$23,500 annually from HUD (see fiscal note). She explained this amount represents one of nine full time employees in the HRC budget, and said this is not documented in the fiscal note.

Ms. MacIntyre advised the Committee that if HRC is not in compliance, it will lose grants for education which have been about \$58,000 annually for the past four years. She said housing discrimination is a serious problem in Montana with about 50 percent of minorities.

Ms. MacIntyre told the Committee that Lloyd Miller, Equal Housing Opportunity Director, HUD, Denver, was present to answer questions. She said she brought a copy of the federal Fair Housing Act and Equal Housing Opportunity Regulations (Exhibits #3 and #4).

Lloyd Miller, Regional Director, Fair Housing and Equal Opportunity, HUD, Denver, said he was neither a proponent nor an opponent, and was present to share significant data.

Mr. Miller stated the federal Fair Housing Act was amended September 13, 1988, and became effective in March 1989. He commented that the U.S. Congress must have been serious about this legislation, as it was passed far more quickly than any other HUD legislation. Mr. Miller said states have 40 months to comply with the Act and, if not, they will be decertified. He advised the Committee that, at that point, HUD can no longer recognize decertified states and will be required to come to local jurisdictions to investigate complaints. He added that this would bring about duplication of effort which would cost both the state and the federal governments more money.

Mr. Miller said the logic behind the bill is that costs will be significantly reduced and significant grants will remain intact. He explained that Denver has a good relationship with Montana which is second to Colorado in workload in the region. He commented that Utah is bringing its legislation up to date, and that Wyoming and North Dakota have yet to bring their states into compliance with the Act.

Toni Austad, Director of Concerned Citizens Coalition (CCC) for Fair Housing in Great Falls, said hers is the only private fair housing agency in Montana. She read from a prepared statement in support of SB 199 (Exhibit #5), and said CCC is unique in its focus on American Indians. Ms. Austad stated the rate of discrimination against Indians in Montana is twice that of any other minority in the state. She said problems are complicated by the difficult complaint process which deters many people from filing a complaint.

Ms. Austad added that CCC has provided fair housing education in Montana.

Kate Cholewa, Montana Womens Lobby, stated her support of SB 199.

Opponents' Testimony:

There were no opponents of SB 199.

Questions from the Committee:

Senator Crippen asked how a mind-set to discrimination could be changed. He referred to language deleted on page 3, lines 11-14, and said that language was there for a reason. He asked if the door would be opened to abuse what the original language was there to correct. Anne MacIntyre replied that was assuming the information was being gathered to use in a discriminatory manner. She stated it is not unlawful to make inquiry, and said that what is unlawful is to use the information for discriminatory purposes.

Senator Crippen said he was concerned that it could become open abuse. He asked what reasonable grounds for discrimination are, on page 2. Anne MacIntyre replied that she was unsure. She said 49-2-01, MCA, says the term "reasonable" is to be strictly construed.

Senator Crippen said he believes "reasonable" is in the language for constitutional purposes.

Senator Halligan asked what requirements in the bill would apply to construction of multi-family units. Anne MacIntyre replied the bill has special requirements concerning handicapped persons beginning on page 5, line 5. She said the requirements are in place under federal law and are in the bill for new construction, but she was not certain about education on new construction.

Senator Rye asked for clarification of "familial status". Anne MacIntyre replied it means a child or children residing with adults. Senator Rye asked if this phrase would preclude unmarried persons who reside together. Ms. MacIntyre replied it would not, nor does it address cohabitation.

Senator Rye asked if an elderly retirement villa would preclude families. Anne MacIntyre replied that a specific section of the law allows renting to older persons and not a family with children in this instance.

Senator Mazurek asked why the statute of limitations was being changed in sections 3 and 7. Anne MacIntyre replied the federal statute of limitations for hearing complaints is one year. She commented that did not sit well with her when the bill was drafted.

Senator Towe asked how much of the material in section 2 is federally mandated. Anne MacIntyre replied it parallels federally mandated law closely.

Senator Towe asked why there is no test for determining what punitive damages are to be assessed by the HRC, and said he was assuming they would be adopted without a test. Anne MacIntyre replied that was true.

Senator Towe asked who pays for the appointed attorney on page 13, line 21. He commented that, unless provided otherwise, it would be the district court. Anne MacIntyre replied she was not certain.

Senator Towe said he also shared Senator Crippen's concerns that mischief could result from taking out the provisions banning inquiry. He asked why this is being done. Anne MacIntyre replied the Board of Realty Regulation and the Montana Association of Realtors (MAR), are required to track this information and have construed current law as prohibiting them from doing so. She added that the HRC may need comparative information from a landlord concerning other tenants relative to an investigation.

Senator Towe asked if she were suggesting the new language would be more advantageous for tracking and if it should be retained in the bill.

Senator Crippen commented that he could see that if the history of a landlord could show a pattern of discrimination, it might be of value. Senator Crippen asked if homosexuality were covered on page 3, lines 6-9, and if it differed from federal language. Anne MacIntyre replied that Montana law does not address the issue at all, and that to her experience "no one has ever been construed to do this". She added that it is not covered in federal law.

Senator Doherty asked if punitive damages language on page 14, "if the court finds discrimination", referred to the district court. Anne MacIntyre replied it did.

Senator Doherty asked about the substantial equivalency test. Anne MacIntyre replied laws and standards can still be adopted by Montana that are tougher than federal laws and standards.

Chairman Pinsoneault commented that the HUD reputation was pretty severely damaged during the past six years. He cited the 40 percent voter turnout in the last election as evidence of federal notoriety, and asked why HUD did not clean up their own act. Lloyd Miller replied that the HUD problem had very little impact at the regional level. He stated that he could not recall any regional people who were involved, and said that was particularly true of Region 8.

Chairman Pinsoneault further commented that he had to close down a six or eight apartment rental unit in St. Ignatius, primarily because of drug and alcohol use by Native Americans. He explained that the Confederated Kootenai-Salish Tribes supported the action, but such incidents are a problem in small communities. Toni Austad replied she hears such comments all the time. She said she basically does not accept putting the burden on an entire race when these incidents involve only a few. Ms. Austad stated that the same situation exists with non-Indian, and that she, basically, does not accept this as it can't be used for a method of discrimination.

Senator Towe asked why blockbusting was added to the bill, and if it were a federal provision. Anne MacIntyre replied it is federally mandated.

Senator Mazurek asked if the one-year statute of limitations on complaints was required by federal law. Anne MacIntyre replied it is.

Closing by bill sponsor:

Senator Brown made no closing comments.

Senator Mazurek asked Valencia Lane to prepare an amendment to make the statute of limitations one year on housing and 180 days on all else.

EXECUTIVE ACTION ON SENATE BILL 153

Motion:

Discussion:

Chairman Pinsoneault said he was hesitant to open up this area.

Senator Towe asked if the Legislature had considered an insurance user dropping an insured who then has to pay medical bills. He stated he believes the issue has to be addressed.

Senator Halligan reported that Jackie Terrell, American Insurance Association, told that Legislature there was an insurance pool. Jackie Terrell replied that Title 33, Chapter 10, part 1 applied to the property and casualty insurance guarantee fund and part 2 refers to the life and health guarantee fund. She stated that if a company goes bankrupt, the fund covers claims that would have been paid by that company. She explained that the fund is comprised of other companies writing insurance in the area. Ms. Terrell advised the Committee it is her understanding that health

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 6 Feb 9

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

CXWIDIT #2
6 Feb 91
SB199

**Statement of Anne L. MacIntyre
Administrator, Human Rights Commission
In support of Senate Bill 199
Senate Judiciary Committee
February 6, 1990**

Since 1982, the Human Rights Commission has had a cooperative worksharing relationship with the U.S. Department of Housing and Urban Development (HUD) for enforcement of housing discrimination laws in Montana. The Commission was considered to be eligible to engage in this worksharing relationship because, at the time we entered into our memorandum of understanding with HUD, we were enforcing a state law which was deemed to be substantially equivalent to the federal Fair Housing Act. This worksharing relationship is an advantageous one for Montana and Montanans in that when a complaint of housing discrimination is filed over which both agencies have jurisdiction, only one agency processes the complaint. This relationship means that parties involved in discrimination complaints need only to deal with one governmental agency concerning the complaint. Furthermore, the relationship allows the agencies to more appropriately focus their resources, and the federal government provides payments to the Commission when it processes complaints in accordance with the worksharing agreement. Further, this relationship allows the Commission to participate in HUD's educational programs and other enforcement activities designed to deal with housing discrimination, which is a significant problem in Montana.

When the Commission first entered into this relationship, Montana law contained broader protection against housing discrimination and more significant procedures for remedying instances of housing discrimination than were contained in the federal law. In 1988, however, Congress enacted the Fair Housing Amendments Act, which substantially altered the federal Fair Housing Act, both substantively and procedurally. The 1988 Act allowed HUD to continue worksharing relationships with agencies considered to be substantially equivalent before the enactment of the 1988 amendments for a period of 40 months after enactment. In order to maintain this cooperative relationship after the 40-month period, the state law must be amended so that it is substantially equivalent to the federal amendments. The 40-month period expires on January 12, 1992, however. After that time, we will no longer be able to maintain our cooperative relationship if the state law is not amended as provided in SB199.

The bill makes the following substantive changes in the housing discrimination provisions of the statute:

1. Specific provisions are added concerning housing discrimination on the basis of handicap, including:

- a requirement that housing providers permit reasonable modifications to housing accommodations, at the expense of the handicapped person. Page 5, lines 8-18.

- a requirement that housing providers make reasonable accommodations in rules, policies, practices, and services. Page 5, lines 19-22.

- a requirement that all new construction of housing accommodations with four or more units be done in a manner to make the housing accessible and adaptable. Page 5, line 23, through page 7, line 6.

2. A provision is added making it unlawful to represent because of race, sex, etc., that a housing accommodation is unavailable when it is in fact available. Page 3, lines 20-25.

3. A provision is added prohibiting blockbusting, that is to induce a person to sell or rent a housing accommodation or property based on representations that a person of a particular race, sex, etc. is moving into the neighborhood. Page 4, lines 1-6.

4. A provision is added making it clear that discrimination on the basis of race, sex, etc. is prohibited in real estate related transactions such as financing, selling, brokering, and appraising. Page 7, lines 7-23. Although section 49-2-306, MCA, prohibits discrimination in financing and credit transactions on the basis of race, sex, etc., it is a poorly drafted section and would need to be completely reworked if we were to amend it for this purpose. Further, section 49-2-306, MCA does not cover real estate related transactions other than financing and does not prohibit discrimination on the basis of familial status.

5. A provision is added prohibiting discrimination in membership or participation in real estate industry organizations on the basis of race, sex, etc. Page 7, line 24 through page 8, line 8.

6. A provision is added prohibiting coercion, intimidation, etc. against a person attempting to exercise his or her rights to be free of housing discrimination on the basis of race, sex, etc. Page 8, lines 9-14. While this provision may seem somewhat duplicative of the provisions of sections 49-2-301 and 49-2-302, MCA, it is added here to insure that we have a state provision which mirrors the federal.

7. Specific criminal sanctions for intimidation or interference in the right to be free of housing discrimination are added. Page 23, line 2 through page 24, line 18.

8. Former subsection (c) of 49-2-305, MCA is repealed. This provision makes it unlawful to make a written or oral inquiry or record of the race, sex, etc. of a person seeking housing. There can be valid reasons for making the inquiry or record, even when relying on the information for a discriminatory purpose would be unlawful. The existence of this provision is a detriment to the efforts of some real estate industry groups to engage in voluntary affirmative marketing and efforts to monitor the existence of housing discrimination. Page 3, lines 11-15.

9. The bill also amends section 49-4-212 by deleting a subsection in existing law which states that a housing provider is not required to modify property in any way for a person with a handicap because this provision conflicts with the provisions of the bill. Page 24, line 19 through page 25, line 4.

The bill also makes a number of procedural changes in the laws prohibiting discrimination. The following are the most significant:

1. A provision is added allowing the Commission to award civil penalties after a finding of unlawful housing discrimination. The penalties are discretionary and the dollar amounts are maximum amounts. Page 9, line 16 through page 10, line 19. Under the federal law, these penalties are placed into the U.S. Treasury, not awarded to the complainant. A similar provision is appropriate here, with the penalties to be placed in an earmarked revenue account. Page 15, lines 15-18.

2. A provision is added allowing either party to make an election for a trial of the housing discrimination claim in a civil action instead of in a hearing before the Commission. Page 11, line 10 through page 12, line 8. The Human Rights Act presently has a provision something like this at section 49-2-509, MCA. However, section 49-2-509, MCA, differs from the federal law in enough respects that it seems more appropriate to except housing discrimination claims from the provisions of section 49-2-509, MCA (at page 18, lines 19-20) and establish a procedure specifically for housing complaints. Note that if the Commission staff finds cause to believe discrimination occurred as a result of its investigation, the Commission staff must represent the complainant in the civil action. This is a specific requirement of the HUD regulations.

3. A provision is added allowing the complainant to pursue a civil action for housing discrimination without recourse to the Commission. Page 12, line 9 through page

14, line 6. The court is specifically authorized to award punitive damages. Page 14, lines 7-13.

4. The statute of limitations is modified to increase the time for filing to 1 year. Page 16, lines 6-21 and page 21, line 12 through page 22, line 2.

5. The authority of a court to award temporary injunctive relief in a case of alleged discrimination is modified to make it conform to the normal statutory rules governing such actions. Page 17, line 22 through page 18, line 16 and page 22, line 5 and page 23, line 1.

I want to emphasize again that the reason the Commission is seeking these changes is so that we will be able to maintain our status as a substantially equivalent agency with HUD for fair housing enforcement. The Commission now receives approximately \$23,500 from HUD per year in its base budget to support its case processing activities. This funding issue is documented in the fiscal note which is attached to the bill. While this may not seem like a great deal of money, it represents approximately one FTE of the nine authorized in the Commission's current level budget. This funding would have to be replaced by general fund or the ability of the Commission to administer the law would be more hampered than it already is. Further, and this is not documented in the fiscal note, if the Commission does not maintain substantial equivalency with the federal law, we will lose our eligibility to receive special grants to perform educational work in the area of housing discrimination. Although these grants have not been included in the Commission's base, we have received an average of about \$58,000 per year in the past four years for such purposes.

Even without these fiscal impacts, there are good reasons to maintain equivalency. I alluded to some of these in the beginning of my testimony. Furthermore, housing discrimination is a serious problem in Montana, as it is in the rest of the nation. The Fair Housing Act was initially enacted in 1968, and the United States, if anything, is more segregated now than it was then. A study conducted in Montana by the Commission in 1987-88 demonstrated that minorities experienced discriminatory treatment in more than 50% of their efforts to acquire rental housing. The Fair Housing Amendments Act was generally intended to enhance fair housing enforcement and SB199 will have that effect in Montana as well.

I have asked Lloyd Miller, the regional director of HUD's Office of Fair Housing and Equal Opportunity in Denver to be here today to address any questions the committee may have concerning substantial equivalency.

from an
Maggi
Re: SB 199
2/6/91

FAIR HOUSING ACT AS AMENDED, EFFECTIVE MARCH 12, 1989

Sec. 800. [42 U.S.C. 3601 note] Short Title

This title may be cited as the "Fair Housing Act".

Sec. 801. [42 U.S.C. 3601] Declaration of Policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Sec. 802. [42 U.S.C. 3602] Definitions

As used in this subchapter--

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 [of the United States Code], receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

14. In § 110.5, paragraphs (b), (e), (g) and (h) are revised to read as follows:

§ 110.5 Definitions.

(b) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Act.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

(g) "Fair housing poster" means the poster prescribed by the Secretary for display by persons subject to sections 804-806 of the Act.

(h) "The Act" means the Fair Housing Act (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3600, *et seq.*

15. In § 110.10, paragraph (a) introductory text and paragraph (c) is revised to read as follows:

§ 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing and Other Prohibited Practices, shall post and maintain a fair housing poster as follows:

(c) All persons subject to section 805 of the Act, Discrimination in Residential Real Estate-Related Transactions shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

16. Section 110.15 is revised to read as follows:

§ 110.15 Location of posters.

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services as contemplated by sections 804 through 806 of the Act.

17. In § 110.25, paragraph (a) is revised to read as follows:

§ 110.25 Description of posters

(a) The fair housing poster shall be 11 inches by 14 inches and shall bear the following legend:



EQUAL HOUSING OPPORTUNITY

We do Business in Accordance With the Fair Housing Act

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988)

IT IS ILLEGAL TO DISCRIMINATE AGAINST

ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS (HAVING ONE OR MORE CHILDREN), OR NATIONAL ORIGIN

- In the sale or rental of housing or residential lots.
- In advertising the sale or rental of housing.
- In the financing of housing.
- In the appraisal of housing.
- In the provision of real estate brokerage services.
- Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development, Assistant Secretary for Fair Housing and Equal Opportunity, Washington, DC 20410

or

HUD Region or [Area Office stamp]

18. Part 115 is revised to read as follows:

PART 115—CERTIFICATION OF SUBSTANTIALLY EQUIVALENT AGENCIES

Sec.

- 115.1 Purpose.
- 115.2 Basis of determination.
- 115.3 Criteria for adequacy of law.
- 115.3a Criteria for adequacy of law—discrimination because of handicap.
- 115.4 Performance standards.
- 115.5 Request for certification.
- 115.6 Procedure for certification.
- 115.7 Denial of certification.
- 115.8 Withdrawal of certification.
- 115.9 Conferences.
- 115.10 Consequences of certification.
- 115.11 Interim referrals.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600-3620); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

§ 115.1 Purpose.

(a) Section 810(f) of the Fair Housing Act, (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Act)) provides that: whenever a complaint alleges a discriminatory housing practice within the jurisdiction of a State or local public agency that has been certified by the Secretary as substantially equivalent, the Secretary shall refer the complaint to that certified agency before taking any action with respect to the complaint. Except with the consent of the certified agency, the Secretary, after referral is made, shall take no further action with respect to the complaint unless:

(1) The certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of referral;

(2) The certified agency, having commenced proceedings, fails to carry forward proceedings with reasonable promptness; or

(3) The Secretary determines that the certified agency no longer qualifies for certification.

The Secretary has delegated the exercise of functions and duties under section 810(f) of the Act to the Assistant Secretary for Fair Housing and Equal Opportunity (the Assistant Secretary).

(b) The purpose of this part is to set forth:

(1) The basis for agency certification.

(2) The procedure by which a determination to certify is made by the Assistant Secretary.

(3) The basis and procedure for withdrawal of certification.

(4) The consequences of certification.

§ 115.2 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, provides that:

(1) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(2) The procedures followed by the agency;

(3) The remedies available to the agency; and

(4) The availability of judicial review of the agency's actions;

Are Substantially substantively equivalent to those created by and under the act; and

(b) Whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.3 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaint matters, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation in no more than 100 days after receipt of the complaint, unless it is impracticable.

(iii) If the agency is unable to complete the investigation within 100 days it shall notify the complainant and respondent in writing of the reasons for not doing so;

(iv) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so it shall notify the complainant and respondent, in writing, of the reasons for not doing so;

(v) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent and the complainant and

shall be subject to the approval of the agency;

(vi) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to Section 803 of the Act (which provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner and units in owner-occupied dwellings containing living quarters for no more than four families).

(5) Be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, i.e., prohibit the following acts:

(i) Refusal to sell or rent based on discrimination because of race, color, religion, sex, familial status, or national origin;

(ii) Refusal to negotiate for a sale or rental based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iii) Otherwise making unavailable or denying a dwelling based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iv) Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, based on discrimination because of race, color, religion, sex, familial status, or national origin;

(v) Advertising in a manner that indicates any preference, limitation, or discrimination because of race, color, religion, sex, familial status, or national origin;

(vi) Falsely representing that a dwelling is not available for inspection, sale, or rental because of discrimination because of race, color, religion, sex, familial status, or national origin;

(vii) Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise of enjoyment of any right granted or protected by section 803, 804, 805, or 806 of the Act;

(viii) Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin;

(ix) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, familial status, or national origin. Such transactions include:

(A) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(B) The selling, brokering, or appraising of residential real property;

(x) Denying a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization, or other service because of race, color, religion, sex, familial status or national origin.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the agency concludes that such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue subpoenas;

(iii) Grant actual damages or arrange to have adjudicated in court at agency expense the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction.

(v) Assess a civil penalty against the respondent, or arrange to have adjudicated in court at agency expense

the award of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper; affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the State or local law prohibit discrimination on the basis of familial status does not require that the State or local law limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The State or local law may assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in Part 100, Subpart E.

(e) A determination of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account all relevant matters of State or local law, e.g., regulations, directives and rules of procedure, or interpretations of the fair housing law by competent authorities, as may be necessary.

(f) A law will be held to be not adequate "on its face" if it permits any of the agency's decision making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, "decision making authority" shall include:

- (1) acceptance of the complaint;
- (2) Approval of the conciliation agreement;
- (3) Dismissal of a complaint;
- (4) Any action specified in Section 115.3(a)(2)(iv) or 115.3(b)(1).

(g) The State or local law must provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an action in an appropriate court not less than 1 year after the occurrence or termination of an alleged discriminatory housing practice. The court should be empowered to:

- (1) Award the plaintiff actual and punitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order;

(3) Allow reasonable attorney's fees and costs.

§ 115.3a Criteria for adequacy of law—discrimination because of handicap.

(a) In addition to the provisions of § 115.3, in order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices, based on handicap, that are substantially equivalent to those provided in the Act, the law or ordinance must be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, i.e., it must prohibit the following acts:

- (1) Advertising in a manner that indicates any preference, limitation, or discrimination because of handicap;
- (2) Falsely representing that a dwelling is not available for inspection, sale, or rental based on discrimination because of handicap;
- (3) Blockbusting, based on representations regarding the entry or prospective entry into the neighborhood of a person or persons with a particular handicap;
- (4) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of handicap. Residential and real estate-related transactions include:

- (i) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or
- (ii) The selling, brokering, or appraising of residential real property;
- (5) Denying a person access to, or membership or participation in, multiple listing services, real estate brokers' organizations, or other services because of handicap;
- (6) Discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a handicap of that buyer or renter, or of a person residing in or intending to reside in that dwelling after it is sold, rented, or made

available, or of any person associated with the buyer or renter;

(7) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of that person, of a person residing in or intending to reside in the dwelling after it is sold, rented, or made available, or of any person associated with that person.

(b) For purposes of this section, discrimination includes—

(1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that—

(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(ii) With respect to dwellings with a building entrance on an accessible route—

(A) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) All premises within covered multifamily dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are

usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(c) The law or ordinance administered by the State or local fair housing agency may provide that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1-1986") suffices to satisfy the requirements of paragraph (b)(3)(ii)(C) of this section.

(d) As used in this section, the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

§ 115.4 Performance standards.

(a) The initial and continued certification that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon an assessment of the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of the law to determine that, in operation, the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making this assessment.

(b) A State or local agency must:

- (1) Engage in comprehensive and thorough investigative activities; and
- (2) Commence proceedings with respect to a complaint before the end of the 30th day after the receipt of the complaint, carry forward proceedings with reasonable promptness, and in accordance with the memorandum of understanding described in section 115.6 of this part, make final administrative disposition of a complaint within one year of the date of receipt of the complaint and, within 100 days of receipt of the complaint, complete the following proceedings:

- (i) Investigation, including the preparation of a final investigative report containing—
 - (A) The names and dates of contacts with witnesses;
 - (B) A summary and dates of correspondence and other contacts with the aggrieved person and the respondent;
 - (C) A summary description of other pertinent records;
 - (D) A summary of witness statements; and
 - (E) Answers to interrogatories.

(ii) Conciliation activity.

(3) Conduct compliance reviews of all settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices.

(4) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(5) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law;

(c) Where the State or local agency has duties and responsibilities in addition to administration of the fair housing law, the Assistant Secretary may consider such matters as the relative priority given to fair housing administration, as compared to such other duties and responsibilities, and the compatibility or potential conflict of fair housing objectives with the agency's other duties and responsibilities.

§ 115.5 Request for certification.

(a) A request for certification under this part may be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organization of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) Data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.4.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept

available for public examination and copying at:

- (1) The office of the Assistant Secretary, and
- (2) the HUD Regional Office in whose jurisdiction the State or local jurisdiction seeking recognition is located, and
- (3) the office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.6 Procedure for certification.

(a) Upon receipt of a request for certification filed under § 115.5, the Assistant Secretary may request further information that he or she considers relevant to the determinations required to be made under this part.

(b) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that the State or local fair housing law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of that determination. Except under circumstances where the Assistant Secretary determines that interim referrals or other utilization of services under § 115.11 is appropriate, the Assistant Secretary shall publish a notice in the Federal Register which advises the public of the determination that the law, on its face, is substantially equivalent, and shall invite interested persons and organizations, during a period of not less than 30 days following publication of the notice, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of such law demonstrates that, in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act. The Federal Register notice shall also invite comments on the Department's determination as to the adequacy of the law on its face.

(c) If the Assistant Secretary determines, on the basis of the standards specified in § 115.4 and after considering the materials and information submitted pursuant to § 115.5, additional material obtained under paragraph (a) of this section, and any written comments filed under paragraph (b) of this section, that, in operation, a State or local fair housing law in fact provides rights and remedies which are substantially equivalent to

those provided in the Act, the Assistant Secretary shall offer to enter into a written agreement with the appropriate State or local agency providing for referral of complaints to the agency and for procedures for communication between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the continuing substantial equivalency of the State or local law. The written agreement may, but need not, be incorporated in a Memorandum of Understanding as described in 24 CFR 111.104(a)(2). Upon execution of a satisfactory agreement, the Assistant Secretary shall publish notice of certification under this part in the Federal Register.

(d) During the period which begins on September 13, 1988 and ends January 13, 1992, each State or locality recognized as substantially equivalent under 24 CFR Part 115 (including any State or locality which had entered into an agreement for interim referrals under § 115.11, unless the State or locality is subsequently denied recognition under 24 CFR 115.7) for the purposes of the Fair Housing Act before September 13, 1988 shall, for the purposes of this paragraph, be considered certified under this part with respect to those matters for which the agency was previously recognized. If the Secretary determines in an individual case that a State or locality has not been able to meet the certification requirements within this 40-month period because of exceptional circumstances (such as the infrequency of legislative sessions in that jurisdiction), the Secretary may extend the period of temporary certification to no later than September 13, 1992.

(1) No State, locality or agency thereof shall be considered certified under this paragraph for the purpose of processing complaints alleging—

(i) Discrimination based on familial status;

(ii) Discrimination based on handicap; or

(iii) Coercion, intimidation or threats as described in § 115.3(a)(5)(vii).

(2) Certification under this paragraph is not a determination that the administrative or judicial remedies provided by the State or locality is substantially equivalent to those provided by the Act.

(e) Certification of a State or local fair housing agency under this part shall remain in effect until withdrawn under § 115.8.

(f) Not less frequently than annually, the Assistant Secretary will cause to be published in the Federal Register a notice which sets forth:

(1) An updated, consolidated list of all certified agencies;

(2) A list of all agencies whose certification under this part has been withdrawn since publication of the previous notice;

(3) A list of agencies with respect to which notice of denial of certification has been published under § 115.7(c) since issuance of the previous notice;

(4) A list of agencies with respect to which a notice for comment has been published under paragraph (b) of this section whose request for certification remains pending;

(5) A list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) whose proposed withdrawal remains pending; and

(6) A list of agencies with which an agreement for interim referrals or other utilization of services has been entered under § 115.11 and remains in effect.

§ 115.7 Denial of certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that a State or local fair housing law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of the reasons for that determination. The Assistant Secretary's advice may include specification of the manner in which the State or local law could be amended in order to provide substantially equivalent rights and remedies. The Assistant Secretary shall extend to the State or local official an opportunity to submit data, views, and arguments in opposition to the Assistant Secretary's determination and to request an opportunity for a conference in accordance with § 115.9. If no submission or request is made, no further action shall be required to be taken by the Assistant Secretary. If the State or local official submits materials but does not request a conference, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency. If, after that evaluation, the Assistant Secretary is still of the opinion that the law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(b) If the Assistant Secretary determines, after considering the

materials and information submitted under § 115.5, any additional information obtained under § 115.6(a), an assessment of the current practices and past performance of the agency in meeting the standards of § 115.4(b), and any written comments received under § 115.6(b), that it has not been demonstrated that, in operation, a State or local fair housing agency in fact provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the Assistant Secretary shall communicate this determination in writing to the State or local agency and shall allow the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9. If a request for a conference is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and, if after that evaluation the Assistant Secretary is still of the opinion that certification should be denied, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(c) Where comment on a request for certification was invited in accordance with § 115.6(b), notice of denial of certification under this section shall be published in the Federal Register.

§ 115.8 Withdrawal of certification.

(a) Not less frequently than every 5 years, the Assistant Secretary shall determine whether each agency certified under this part continues to qualify for certification. The Assistant Secretary shall take appropriate action with respect to any agency not so qualifying.

(b) The Assistant Secretary shall periodically review the administration of fair housing laws recognized under this part. If the Assistant Secretary finds, as a result of a periodic review, upon the petition of an interested person or organization, or otherwise, that taken as a whole, the agency's administration of its fair housing law or the law, on its face, no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(c) The Assistant Secretary shall propose withdrawal of certification unless review establishes that the current fair housing law administered by the certified agency meets the criteria of § 115.3 and that current practices and past performance of the agency meet the standards of § 115.4.

(d) Before the Assistant Secretary publishes notice of a proposed withdrawal of certification, the Assistant Secretary shall inform the State or local agency in writing of his or her intention to withdraw certification. The communication shall state the reasons for the proposed withdrawal and provide the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9.

(e) Notice of a proposed withdrawal shall be published in the Federal Register. The notice shall allow the State or local agency and other interested persons and organizations not less than 30 days in which to file written comments on the proposal.

(f) If a request for a conference in accordance with § 115.9 is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and other interested persons or organizations, and if after that evaluation the Assistant Secretary is still of the opinion that certification should be withdrawn, the Assistant Secretary shall withdraw certification and shall publish notice of the withdrawal in the Federal Register.

§ 115.9 Conferences.

(a) Whenever an opportunity for a conference is timely requested by a State or local agency in accordance with § 115.7 or § 115.8, the Assistant Secretary shall issue an order designating an officer who shall preside at the conference. The order shall indicate the issues to be resolved and any initial procedural instructions that might be appropriate for a particular conference. It shall fix the date, time and place of the conference. The date shall not be less than 20 days after the date of the order. The date and place shall be subject to change for good cause.

(b) A copy of the order shall be served on the State or local agency and:

(1) In the case of a denial of certification, on any person or organization that files a written comment in accordance with § 115.6(b); or

(2) in the case of a withdrawal of certification, on any person or organization that files a petition in accordance with § 115.8(a) or written comment in accordance with § 115.8(c). The agency and all such persons and organizations shall be considered to be participants in the conference. After service of the order designating the conference officer, and until the officer submits a recommended determination,

all communications relating to the subject matter of the conference shall be addressed to that officer.

(c) The conference officer shall have full authority to regulate the course and conduct of the conference. A transcript shall be made of the proceedings at the conference. The transcript and all comments and petitions relating to the proceedings shall be made available for inspection by interested persons.

(d) The conference officer shall prepare proposed findings and a recommended determination, a copy of which shall be served on each participant. Within 20 days after service, any participant may file written exceptions. After the expiration of the period for filing exceptions, the conference officer shall certify the entire record, including the proposed findings and recommended determination, and any exceptions to the findings and recommendations, to the Assistant Secretary, who shall review the record and issue a final determination within 30 days. Where applicable, this determination shall be published in the Federal Register.

§ 115.10 Consequences of certification.

(a) Where all alleged violations of the Act contained in a complaint received by the Assistant Secretary appear to constitute violations of a State or local fair housing law administered by an agency that has been certified as substantially equivalent, the complaint shall be referred promptly to the appropriate State or local agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint, except as provided for by the Act, this Part, and by §§ 103.100 through 103.115 or § 105.20 through 105.22 of this chapter.

(b) Notwithstanding paragraph (a) of this section, no complaint based in whole or in part on allegations of discrimination on the basis of familial status or handicap shall be referred to any State, locality or agency thereof whose certification was granted in accordance with § 115.6(d) or section 810(f)(4) of the Act, without regard to whether the fair housing law administered by such certified agency appears to prohibit discrimination based on familial status or handicap.

(c) Notwithstanding paragraph (a) of this section, whenever the Secretary has reason to believe that a complaint shows a basis may exist for the commencement of proceedings against any respondent under section 814(a) of the Act, or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which that belief is

based to the Attorney General, or to appropriate governmental licensing or supervisory authorities.

§ 115.11 Interim referrals.

If the Assistant Secretary determines after application of the criteria set forth in § 115.3, that a State or local fair housing law on its face provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, but that the law has not been in effect, or the appropriate State or local agency in operation, for a sufficient time to permit a demonstration of compliance with the performance standards described in § 115.4, the Assistant Secretary may enter into a written agreement with the State or local agency providing for referral of complaints to the agency on such terms and conditions as the Assistant Secretary shall prescribe, or providing for other utilization of the services of the State or local agency and its employees upon agreed terms, and providing further for procedures for communications between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's administration and enforcement of its law and to assist the Assistant Secretary in making the determination required in § 115.2(b). The agreement may provide for reactivation of referred complaints by the Assistant Secretary without regard to the limitations described in § 115.10. If such an agreement for interim referrals or other utilization of services is entered, the Assistant Secretary may defer final determination under § 115.6 or § 115.7 for a reasonable period determined by the Assistant Secretary to be necessary in order to permit a fair assessment of the agency's performance. In no event shall this period extend more than two years beyond the date of entry into the agreement for interim referrals or other utilization of services. This two-year limitation does not apply to agencies certified in accordance with § 115.6(d). However, an agreement under this section shall not be extended beyond the date of certification under § 115.6 or denial of recognition under § 115.7. Notice of entry into an agreement under this section shall be published in the Federal Register.

19. Part 121 is added to read as follows:

PART 121—COLLECTION OF DATA

Sec.

121.1 Purpose.

121.2 Furnishing of data by program participants.

Exhibit #5
6 Feb 91
SB 199

TO: Montana Senate Judiciary Committee

FROM: Toni Austad
Fair Housing Project Director
Concerned Citizens Coalition
825 3rd Avenue South
Great Falls, MT 59405

CONCERNING: Support for Senate Bill No. 199

Chairman Pinsoneault and other members of this committee. My name is name is Toni Austad. I am the Director of Concerned Citizens Coalition Fair Housing Project. Concerned Citizens Coalition is a grass roots organization active in Great Falls since 1982 working on economic and social issues affecting low and moderate income people.

CCC is the only private Fair Housing organization in Montana and we are currently conducting enforcement activities in Great Falls, Missoula, and Billings, utilizing demonstration grant funding from the Department of Housing and Urban Development. What is unique about our work is our focus on American Indians.

Housing discrimination is a significant issue in Montana. Unfortunately, housing discrimination is viewed with apathy by most of the groups likely to benefit from equal housing opportunities and affirmative marketing.

Funding for Fair Housing in Montana except from Federal sources is non-existent. With unemployment on Montana's reservation exceeding 60 percent, Indians frequently move from the reservation to find work or go to school. Their search for housing is often frustrated by landlords who refuse to rent to Indians, charge higher security deposits or impose strict and discriminatory rules for occupancy. The rate of discrimination against Indians in Montana is twice that for other minorities in the United States. Some landlords attempt to justify their discrimination by clinging to stereotypical beliefs, while others perceive their property interests as just cause for discrimination.

The problem is complicated by Indians who do not believe government can or will help them with their complaints, by cultural beliefs that challenging discrimination is not necessary, and finally, because American Indians have experienced discrimination for such a long time that it is commonly accepted as a way of life. Many people do not know they have been discriminated against or their rights under the law.

The problems we face in Montana in housing discrimination are complicated even more by the fact that the complaint process is difficult, confusing, and often takes longer than anyone expected. And, for many people in Montana, the Commission is as far away as 250 miles.

When the need for shelter is immediate, the prospect of a long and difficult complaint process quickly deters many people from following through with complaints.

I give you this brief background of housing discrimination to bring home an important point. CCC has, over the years, worked cooperatively and successfully with the Commission to further fair housing activities in Montana. I cannot imagine what it would be like to have HUD investigate complaints from 800 miles away. If Montana does not work cooperatively with HUD, it is possible that complaints could end up being investigated by both HUD and the Commission. That would be difficult for us and difficult for landlords.

Additionally, the Commission for Human Rights has provided Fair Housing education and outreach activities in Montana, funded in part by HUD. The passage of this bill insures that the Commission would continue to be eligible for federal grants to continue this important work.

By making the Montana Human Rights Act consistent with the Federal Fair Housing Act Amendments of 1988, we can all work to end housing discrimination in a responsible manner by maximizing enforcement and educational resources here in Montana.

Thank you for the opportunity to speak with you today.

DATE 2-6-91

COMMITTEE ON

Judiciary

SB 198

VISITORS' REGISTER SB 199 H.B. 71

[illegible]

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Pinsoneault, on February 7, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Senator VanValkenburg asked the Committee to consider an amendment to SB 51 on Friday, February 8, 1991.

Senator Doherty announced that Representative Dave Brown had asked him to carry an amendment on bad check charges on the Senate floor on HB 114.

HEARING ON HOUSE BILL 178

Presentation and Opening Statement by Sponsor:

Representative Howard Toole, District 60, said HB 178 addresses the Uniform International Will Act covering ownership of property in more than one country. He advised the Committee that a 1973 convention established a series of rules relating to international wills, and that the NCCUSL (National Conference Committee on Uniform Statute Law) began to check it out in 1977

HEARING ON HOUSE BILL 72Presentation and Opening Statement by Sponsor:

Representative Jim Rice, District 43, said HB 72 is one of the interim study of juvenile detention bills, and that it would release those presenting the lowest risk to the community more quickly to avoid overcrowding. He said nine counties are currently experiencing overcrowding and five of those counties have identified the problem as being very serious (Exhibit #1).

Representative Rice advised the Committee that the bill provides mandatory release of misdemeanor offenders if they are held for more than 60 days and have not yet gone to trial. He explained that section 2 creates a release assistance officer and codifies release assistance officers already in existence (such as in Missoula). He stated that this officer is not necessarily a new employee, but will review all arrests and jailings. He said the release decision must be made by the judge within 40 hours of arrest.

Representative Rice said section 4 recommends that the court try to schedule those held before those not being held. He stated that after section 5, the rest of the bill is housekeeping. Representative Rice told the committee the system has worked well in Missoula County, and that the bill is based on Oregon and North Carolina sources.

Proponents' Testimony:

There were no proponents.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Svrcek asked why section 6 was deleted from the bill. Representative Rice replied there was opposition to the section.

Closing by Sponsor:

Representative Rice advised the Committee there were proponents at the House hearing. He said HB 72 is a good bill and asked for favorable consideration.

EXECUTIVE ACTION ON SENATE BILL 199Motion:

Discussion:

Valencia Lane provided amendments requested by Senator Crippen and drafted by Anne MacIntyre, Administrator, Human Rights Commission (Exhibit #2).

Senator Towe said he believes inquiring of physical handicaps is justifiable. Anne MacIntyre replied that language on page 2 could be changed to "unless based on reasonable grounds". She said the Commission could then address this by rule, and commented that it would probably be reasonable to inquire as to the size of a family.

Senator Svrcek said he was concerned that small talk between a landlord and a renter could become a problem. Senator Crippen replied that the word "practice" in the bill refers to a pattern of a landlord.

Senator Grosfield asked if there were a handbook for landlords. Anne MacIntyre replied the Commission is developing a training package now through HUD for landlords and property managers.

Chairman Pinsoneault commented that the National Association of Landlords puts out its own publication which contains good, explicit information.

Senator Svrcek asked that amendment 2 be modified to include "on the basis of". Anne MacIntyre suggested inserting "for the purpose of discriminating on the basis of" after "to make an inquiry".

Amendments, Discussion, and Votes:

Senator Crippen made a motion that the language proposed by Anne MacIntyre be included in her original amendment (Exhibit #2). The motion carried unanimously.

Senator Mazurek provided copies of his proposed amendments (Exhibit #3). He said he was concerned with doubling any area of the law concerning human rights violations with regard to the statute of limitations. Senator Mazurek explained that it is not required in any area except housing, and that all others would remain at 180 days.

Senator Towe said he suspected the biggest area is in employment discrimination. Anne MacIntyre replied it is, and said she was not sure large numbers would be excluded with the 180 day statute of limitations. She advised the Committee there has been some criticism that 180 days is a short period of time.

Senator Towe commented that it could be added to the title.

Senator Mazurek stated veterans and handicapped are not included in human rights statutes. Senator Towe replied he was concerned that if housing were at one year, it would be confusing. Senator Mazurek advised him there are all kinds of different statutes of limitation.

Senator Doherty said he believes it would create the potential for confusion, and that uniformity would be better. He stated these cases are notoriously fact-bound and are worse than divorce.

Senator Towe commented that Senator Mazurek's amendments could be taken and the rest be addressed through a committee bill. Senator Mazurek replied he would not support a committee bill. He stated 180 days has worked since 1979 and ought to continue, and added that he had not heard a clamor to change it.

Senator Svrcek asked Senator Brown to comment. Senator Brown replied he favored Senator Mazurek's amendment, as the state needs to conform to federal law on this issue.

Recommendation and Vote:

Senator Harp made a motion that Senator Mazurek's amendments be approved. The motion carried unanimously.

Senator Mazurek made a motion that SB 199 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 198

Motion:

Discussion:

Senator Mazurek asked Anne MacIntyre if she had brought the correction in this bill to the attention of the Code Commissioner. Ms. MacIntyre replied she did not.

Amendments, Discussion, and Votes:

Recommendation and Vote:

Senator Mazurek made a motion that SB 198 DO PASS. The motion carried unanimously.

AMENDED
7 Feb 91
SB 199

Amendments to Senate Bill No. 199
First Reading Copy (White)

Prepared by Anne MacIntyre
February 7, 1991

1. Page 2, line 22.
Strike: "the distinction is"
2. Page 3.
Following: line 15
Insert: "(c) to make an inquiry of the sex, race, creed,
religion, age, familial status, physical or mental
handicap, color, or national origin of a person
seeking to buy, lease, or rent the housing
accommodation or property;"
Renumber: subsequent subsections

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 7 Feb

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

EXHIBIT #3
7 Feb 91
SB 199

Amendments to Senate Bill No. 199
First Reading Copy (White)

Requested by Senator Mazurek
For the Committee on Judiciary

Prepared by Valencia Lane
February 6, 1991

1. Title, line 12.
Strike: "49-3-304,"
2. Page 9, line 16.
Following: "laws."
Insert: "(1) A complaint may be filed with the commission by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within 1 year after the alleged unlawful discriminatory practice occurred or was discovered."
Renumber: subsequent subsections
3. Page 9, line 17.
Strike: "(1)(b)"
Insert: "(2)(b)"
4. Page 10, line 17.
Strike: "(1)(a)(ii) and (1)(a)(iii)"
Insert: "(2)(a)(ii) and (2)(a)(iii)"
5. Page 12, line 2.
Page 13, lines 10, 13, and 18.
Strike: "(4)"
Insert: "(5)"
6. Page 12, line 8.
Strike: "(3)(a)"
Insert: "(4)(a)"
7. Page 12, line 25.
Strike: "(4)(d)"
Insert: "(5)(d)"
8. Page 14, line 6.
Page 15, lines 1, 4, and 12.
Strike: "(6)"
Insert: "(7)"

9. Page 16, line 6.
Following: "in"
Insert: "[section 2] and"
Following: "(b)"
Insert: "of this section"

10. Page 16, lines 8 and 14.
Strike: "1 year"
Insert: "180 days"

11. Page 16, line 19.
Strike: "485"
Insert: "300"

12. Page 21, line 11 through page 22, line 4.
Strike: section 7 in its entirety
Renumber: subsequent sections

13. Page 25, lines 9 and 12.
Strike: "9"
Insert: "8"

Amendments to Senate Bill No. 199
First Reading Copy (White)

For the Committee on Judiciary

Prepared by Valencia Lane
February 7, 1991

Ex 3a
2-7-91
SB 199

1. Title, line 12.
Strike: "49-3-304,"

2. Page 2, line 22.
Following: "when"
Strike: "the distinction is"

3. Page 3, line 16.
Following: line 15
Insert: "(c) to make an inquiry for the purpose of
discriminating on the basis of the sex, race, creed,
religion, age, familial status, physical or mental handicap,
color, or national origin of a person seeking to buy, lease,
or rent the housing accommodation or property;"
Renumber: subsequent subsections

4. Page 9, line 16.
Following: "laws."
Insert: "(1) A complaint may be filed with the commission by or
on behalf of a person claiming to be aggrieved by any
discriminatory practice prohibited by 49-2-305. The
complaint must be in written form and must be filed with the
commission within 1 year after the alleged unlawful
discriminatory practice occurred or was discovered."
Renumber: subsequent subsections

5. Page 9, line 17.
Strike: "(1)(b)"
Insert: "(2)(b)"

6. Page 10, line 17.
Strike: "(1)(a)(ii) and (1)(a)(iii)"
Insert: "(2)(a)(ii) and (2)(a)(iii)"

7. Page 12, line 2.
Page 13, lines 10, 13, and 18.
Strike: "(4)"
Insert: "(5)"

8. Page 12, line 8.

Ex. 3a
2-7-91
SB 199

Strike: "(3)(a)"
Insert: "(4)(a)"

9. Page 12, line 25.

Strike: "(4)(d)"
Insert: "(5)(d)"

10. Page 14, line 6.

Page 15, lines 1, 4, and 12.

Strike: "(6)"
Insert: "(7)"

11. Page 16, line 6.

Following: "in"
Insert: "[section 2] and"
Following: "(b)"
Insert: "of this section"

12. Page 16, lines 8 and 14.

Strike: "1 year"
Insert: "180 days"

13. Page 16, line 19.

Strike: "485"
Insert: "300"

14. Page 21, line 11 through page 22, line 4.

Strike: section 7 in its entirety
Renumber: subsequent sections

15. Page 25, lines 9 and 12.

Strike: "9"
Insert: "8"

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 8, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 199 (first reading copy -- white), respectfully report that Senate Bill No. 199 be amended and as so amended do pass:

1. Title, line 12.

Strike: "49-3-304,"

2. Page 3, line 22.

Following: "when"

Strike: "the distinction is"

3. Page 3, line 16.

Following: line 15

Insert: "(c) to make an inquiry for the purpose of discriminating on the basis of the sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property;"

Renumber: subsequent subsections

4. Page 9, line 16.

Following: "laws."

Insert: "(1) A complaint may be filed with the commission by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within 1 year after the alleged unlawful discriminatory practice occurred or was discovered."

Renumber: subsequent subsections

5. Page 9, line 17.

Strike: "(1)(b)"

Insert: "(2)(b)"

6. Page 10, line 17.

Strike: "(1)(a)(ii) and (1)(a)(iii)"

Insert: "(2)(a)(ii) and (2)(a)(iii)"

7. Page 12, line 2.

Page 13, lines 10, 13, and 18.

Strike: "(4)"

Insert: "(5)"

8. Page 12, line 2.

Strike: "(3)(a)"

Insert: "(4)(a)"

9. Page 12, line 25.

Strike: "(4)(d)"

Insert: "(5)(d)"

10. Page 14, line 6.

Page 15, lines 1, 4, and 12.

Strike: "(6)"

Insert: "(7)"

11. Page 16, line 6.

Following: "in"

Insert: "[section 2] and"

Following: "(b)"

Insert: "of this section"

12. Page 16, lines 3 and 14.

Strike: "1 year"

Insert: "180 days"

13. Page 16, line 19.

Strike: "485"

Insert: "300"

14. Page 21, line 11 through page 22, line 4.

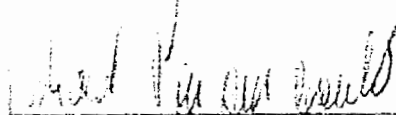
Strike: section 7 in its entirety

Renumber: subsequent sections

15. Page 25, lines 9 and 12.

Strike: "9"

Insert: "8"

Signed: 

Richard Pinsoneault, Chairman

Amend. 2-6-91
Amd. Cobd.

SB 2-8 3:05
Sec. of Senate

REPORT LCB4

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(H) JUDICIARY

PAGE NBR..... 98
 RUN TIME13:25
 RUN DATE.... 06/04/91

CHAIRMAN--BILL STRIZICH
 NORMAL SCHEDULE==> SITE: ROOM 312-2

DAYS: M,T,W,T,F

TIME: 8:00 A.M.

SECRETARY--JEANNE DOMME

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0198 BROWN, BOB	2/12	3/20		CONCUR CORRECT HOUSING DISCRIMINATION CITATION ERROR		3/20
SB0199 BROWN, BOB	2/13	3/20		CONCUR AMEND HOUSING DISCRIMINATION LAWS TO CONFORM TO FEDERAL LAW		3/21
SB0204 GAGE, DEL	2/15	3/06		CONCUR AS AMENDED PROVIDE ALTERNATIVE SENTENCING FOR FELONY OFFENSES RELATED TO DANGEROUS DRUG		3/11
SB0214 TOWE, TOM	3/04	3/12		CONCUR INCREASE DOLLAR AMOUNT SUBJECT TO CIVIL JURISDICTION IN CERTAIN COURTS		3/12
SB0228 YELLOWTAIL JR., BILL	3/04	3/08		CONCUR INCREASE SALARIES FOR SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES		3/12
SB0246 NATHE, DENNIS	3/04	3/13		EXTEND TERMINATION DATE FOR LIMITATIONS FOR CERTAIN LIABILITIES		
SB0249 SVRCEK, PAUL	3/04	3/07		CONCUR AS AMENDED AMEND THE MONTANA CRIMINAL JUSTICE INFORMATION ACT		3/11
SB0250 KEATING, TOM	3/04	3/15		CONCUR AS AMENDED AMEND THE LAWS RELATING TO COMMITMENT OF DEVELOPMENTALLY DISABLED PERSONS		3/15
SB0257 GAGE, DEL	3/04	3/15		CONCUR CLARIFY STATUS OF CERTAIN PERSONNEL OF THE DEPARTMENT OF JUSTICE		3/15
SB0270 WILLIAMS, BOB	3/04	3/13		CONCUR AS AMENDED LEGALIZE AND REGULATE AMUSEMENT GAMES		4/01
SB0293 DOHERTY, STEVE	3/04	3/15		CONCUR INCREASE JURISDICTION OF MUNICIPAL COURTS		3/19

53

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 199

INTRODUCED BY B. BROWN, YELLOWTAIL, J. RICE, STRIZICH

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE HOUSING DISCRIMINATION LAWS TO MAKE THEM SUBSTANTIALLY EQUIVALENT TO FEDERAL DISCRIMINATION LAW; PROVIDING PROCEDURES AND REMEDIES FOR ENFORCEMENT OF HOUSING DISCRIMINATION LAWS; PROHIBITING INTIMIDATION OR INTERFERENCE IN THE RIGHT TO BE FREE FROM HOUSING DISCRIMINATION; PROVIDING PENALTIES; AND AMENDING SECTIONS 49-2-305, 49-2-501, 49-2-503, 49-2-506, 49-2-509, 49-3-384, 49-3-306, AND 49-4-212, MCA."

WHEREAS, the Legislature has previously included housing discrimination as a subject of discrimination law in the Montana Human Rights Act; and

WHEREAS, the housing discrimination laws in the Montana Human Rights Act were modeled after the federal Fair Housing Act of 1968; and

WHEREAS, in 1988, Congress substantially amended the federal Fair Housing Act, enforced by the Department of Housing and Urban Development; and

WHEREAS, the Montana Commission for Human Rights processes housing discrimination complaints in Montana that allege a violation of both the Montana Human Rights Act and

the federal Fair Housing Act; and

WHEREAS, the Montana Commission for Human Rights receives a substantial portion of its funding from contracts with the Department of Housing and Urban Development for processing federal housing discrimination cases; and

WHEREAS, after January 13, 1992, the Department of Housing and Urban Development will no longer contract with any state fair housing agency that does not enforce a state law providing rights and remedies substantially equivalent to those provided by the federal Fair Housing Act; and

WHEREAS, the rights and remedies provided by the Montana Human Rights Act are not presently substantially equivalent to those provided by the federal Fair Housing Act.

THEREFORE, it is appropriate for the Legislature to amend the housing discrimination laws in the Montana Human Rights Act to maintain substantial equivalency with the federal Fair Housing Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 49-2-305, MCA, is amended to read:

"49-2-305. Discrimination in housing -- exemptions. (1) Except when the ~~distinction~~ is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or

SECOND READING

unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

~~(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property;~~

(C) TO MAKE AN INQUIRY FOR THE PURPOSE OF DISCRIMINATING ON THE BASIS OF THE SEX, RACE, CREED, RELIGION, AGE, FAMILIAL STATUS, PHYSICAL OR MENTAL HANDICAP, COLOR, OR NATIONAL ORIGIN OF A PERSON SEEKING TO BUY, LEASE, OR RENT THE HOUSING ACCOMMODATION OR PROPERTY;

~~(d)(c)(D)~~ to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin;

~~(d)(E)~~ to represent to a person that a housing

accommodation or property is not available for inspection, sale, or rental because of that person's sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin when the housing accommodation or property is in fact available; or

~~(e)(F)~~ for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is ~~also~~ an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental handicap of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or

property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental handicap includes:

(a) refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may

be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) makes the public use and common use portions of the housing accommodation readily accessible to and usable by handicapped persons;

(B) provides doors designed to allow passage into and within all premises within the housing accommodation sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual in a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that

1 does not have at least one building entrance on an
 2 accessible route because it is impractical to do so due to
 3 the terrain or unusual characteristics of the site is not
 4 required to comply with the requirements of subsection
 5 (5)(c)(i).

6 (6) For purposes of subsection (5), the term "covered
 7 multifamily housing accommodation" means:

8 (a) a building consisting of four or more dwelling
 9 units if the building has one or more elevators; and

10 (b) ground floor units in a building consisting of four
 11 or more dwelling units.

12 (7) (a) It is an unlawful discriminatory practice for
 13 any person or other entity whose business includes engaging
 14 in residential real estate-related transactions to
 15 discriminate because of sex, race, creed, religion, age,
 16 familial status, physical or mental handicap, color, or
 17 national origin against a person in making available a
 18 transaction or in the terms or conditions of a transaction.

19 (b) For purposes of this subsection (7), the term
 20 "residential real estate-related transaction" means any of
 21 the following:

22 (i) the making or purchasing of loans or providing
 23 other financial assistance;

24 (A) for purchasing, constructing, improving, repairing,
 25 or maintaining a housing accommodation or property; or

1 (B) secured by residential real estate; or

2 (ii) the selling, brokering, or appraising of
 3 residential real property.

4 (8) It is an unlawful discriminatory practice to deny a
 5 person access to or membership or participation in a
 6 multiple-listing service; real estate brokers' organization;
 7 or other service, organization, or facility relating to the
 8 business of selling, leasing, or renting housing
 9 accommodations or property or to discriminate against the
 10 person in the terms or conditions of access, membership, or
 11 participation because of sex, race, creed, religion, age,
 12 familial status, physical or mental handicap, color, or
 13 national origin.

14 (9) It is an unlawful discriminatory practice to
 15 coerce, intimidate, threaten, or interfere with a person in
 16 the exercise or enjoyment of or because of his having
 17 exercised or enjoyed or having aided or encouraged any other
 18 person in the exercise or enjoyment of a right granted or
 19 protected by this section.

20 (4)(10) The prohibitions of this section against
 21 discrimination because of age and familial status do not
 22 extend to housing for older persons. "Housing for older
 23 persons" means housing:

24 (a) provided under any state or federal program
 25 specifically designed and operated to assist elderly

1 persons;

2 (b) intended for, and solely occupied by, persons 62
3 years of age or older; or

4 (c) intended and operated for occupancy by at least one
5 person 55 years of age or older per unit in accordance with
6 the provisions of 42 U.S.C. 3605(b)(2)(C) and (3) and 24
7 C.F.R. 100.304, as those sections read on October 1, 1989.

8 {5}{11} The prohibitions of this section against
9 discrimination because of age and familial status do not
10 extend to rooms or units in dwellings containing living
11 quarters occupied or intended to be occupied by no more than
12 two families living independently of each other, if the
13 owner actually maintains and occupies one of the living
14 quarters as his residence.

15 {6}{12} For purposes of this section, "familial status"
16 means having a child or children who live or will live with
17 a person. A distinction based on familial status includes
18 one that is based on the age of a child or children who live
19 or will live with a person."

20 NEW SECTION. Section 2. Procedures and remedies for
21 enforcement of housing discrimination laws. (1) A COMPLAINT
22 MAY BE FILED WITH THE COMMISSION BY OR ON BEHALF OF A PERSON
23 CLAIMING TO BE AGGRIEVED BY ANY DISCRIMINATORY PRACTICE
24 PROHIBITED BY 49-2-305. THE COMPLAINT MUST BE IN WRITTEN
25 FORM AND MUST BE FILED WITH THE COMMISSION WITHIN 1 YEAR

1 AFTER THE ALLEGED UNLAWFUL DISCRIMINATORY PRACTICE OCCURRED
2 OR WAS DISCOVERED.

3 {1}{2} (a) Except as provided in subsection {1}{b}
4 {2}(B), if the commission, in a hearing under 49-2-505,
5 finds that a person, institution, entity, or agency against
6 whom a complaint was filed under this part has engaged in a
7 discriminatory practice in violation of 49-2-305, the
8 commission may, in addition to the remedies provided by
9 49-2-506, to vindicate the public interest, assess a civil
10 penalty:

11 (i) in an amount not exceeding \$10,000 if the
12 respondent has not been found to have committed any prior
13 discriminatory housing practice in violation of 49-2-305;

14 (ii) in an amount not exceeding \$25,000 if the
15 respondent has been found to have committed one other
16 discriminatory housing practice in violation of 49-2-305
17 during the 5-year period ending on the date of the filing of
18 the complaint; and

19 (iii) in an amount not exceeding \$50,000 if the
20 respondent has been found to have committed two or more
21 discriminatory housing practices in violation of 49-2-305
22 during the 7-year period ending on the date of the filing of
23 the complaint.

24 (b) If the acts constituting the discriminatory housing
25 practice that is the object of the complaint are committed

by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections ~~†††††-and-†††††~~ (2)(A)(II) AND (2)(A)(III) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.

~~†2†~~(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is in substance affirmed:

(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency; and

(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

~~†3†~~(4) (a) When a complaint is filed under 49-2-305, a complainant, respondent, or aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The

election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the complaint relates. Within 30 days after the election is made, the commission shall commence a civil action in an appropriate district court on behalf of the aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection ~~†4†~~ (5). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene in the action.

(b) The commission may not continue administrative proceedings on a complaint after an election is made in accordance with subsection ~~†3†††~~ (4)(A).

~~†4†~~(5) (a) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a

case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the commission except as provided in subsection ~~(4)~~(d) (5)(D). If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission may not continue administrative proceedings on a complaint after the beginning of a trial of a civil action commenced by the aggrieved party under this subsection ~~(4)~~ (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved person may not commence a civil action under this subsection ~~(4)~~ (5) with respect to an alleged

violation of 49-2-305 if the commission has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection ~~(4)~~ (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

(f) Upon timely application, the commission may intervene in a civil action brought under this subsection ~~(4)~~ (5) if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under subsection ~~(6)~~ (7).

~~(5)~~(6) If the court finds that a person, institution, entity, or agency against whom a complaint was filed under this section has engaged in a discriminatory practice in violation of 49-2-305, the court may, in addition to the other remedies provided under 49-2-506, award punitive damages. The court may also award attorney fees to the prevailing party.

1 ~~(6)~~(7) (a) Whenever the commission has reasonable cause
 2 to believe that a person or group of persons is engaged in a
 3 pattern or practice in violation of 49-2-305 or that a group
 4 of persons has been discriminated against in violation of
 5 49-2-305 and the denial raises an issue of general public
 6 importance, the commission may commence a civil action in an
 7 appropriate district court. The commission may also commence
 8 a civil action in any appropriate district court for relief
 9 regarding breach of a conciliation agreement in a case
 10 regarding an alleged violation of 49-2-305 if the commission
 11 is a party to the agreement.

12 (b) The commission may file a civil action under this
 13 subsection ~~(6)~~ (7) within 18 months after the alleged breach
 14 of the conciliation agreement or unlawful discriminatory
 15 practice occurred or was discovered.

16 (c) In a civil action under this subsection ~~(6)~~ (7),
 17 the court may, in addition to the remedies provided under
 18 49-2-506, assess a civil penalty against the respondent:

19 (i) in an amount not exceeding \$50,000 for a first
 20 violation; and

21 (ii) in an amount not exceeding \$100,000 for any
 22 subsequent violation.

23 (d) Upon timely application, a person may intervene in
 24 a civil action under this subsection ~~(6)~~ (7) that involves
 25 an alleged violation of 49-2-305 with respect to which the

1 intervenor is an aggrieved person.

2 ~~(7)~~(8) Civil penalties under this section must be paid
 3 to the state treasurer to be deposited in an account in the
 4 state special revenue fund to be used by the commission for
 5 housing discrimination enforcement.

6 **Section 3.** Section 49-2-501, MCA, is amended to read:

7 "49-2-501. Filing complaints. (1) A complaint may be
 8 filed by or on behalf of any person claiming to be aggrieved
 9 by any discriminatory practice prohibited by this chapter.
 10 The complaint must be in the form of a written, verified
 11 complaint stating the name and address of the person,
 12 educational institution, financial institution, or
 13 governmental entity or agency alleged to have engaged in the
 14 discriminatory practice and the particulars of the alleged
 15 discriminatory practice. The commission staff may file a
 16 complaint in like manner when a discriminatory practice
 17 comes to its attention.

18 (2) (a) Except as provided in [SECTION 2] AND
 19 subsection (2)(b) OF THIS SECTION, a complaint under this
 20 chapter must be filed with the commission within ~~±90-days ±~~
 21 year 180 DAYS after the alleged unlawful discriminatory
 22 practice occurred or was discovered.

23 (b) If the complainant has initiated efforts to resolve
 24 the dispute underlying the complaint by filing a grievance
 25 in accordance with any grievance procedure established by a

collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within ~~180 days~~ 1-year 180 DAYS after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within ~~300~~ 485 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein may not be considered by the commission."

Section 4. Section 49-2-503, MCA, is amended to read:

"49-2-503. Temporary relief by court order. (1) At any time after a complaint is filed under this chapter alleging ~~an-unlawful-discriminatory-practice, the-commission-may-file a-petition-in-the-district-court-in-the-county-in-which--the subject--of-the-complaint-occurs-or-in-the-county-in-which-a respondent-resides-or-transacts-business-seeking-appropriate temporary-relief-against-this-practice, including--an--order restraining--the--respondent--from-interfering-in-any-manner with-an-order-the-commission-may-enter-with-respect--to--the complaint.~~

(2) ~~The--court--has--the--power--to-grant-the-temporary relief-or-restraining-order-it-considers--just--and--proper. However,--no-relief-or-order-extending-beyond-14-days-may-be~~

~~granted-except-by--consent--of--the--respondent--or--upon--a finding--by--the--court--that--there--is-reasonable-cause-to believe-that-the-respondent-has--engaged--in--discriminatory practices, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."~~

Section 5. Section 49-2-506, MCA, is amended to read:

"49-2-506. Procedure upon a finding of discrimination.

(1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The Except as provided in [section 2], the order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation

1 agreement requires inspection by the commission staff for a
2 period of time to determine if the respondent is complying
3 with that order or agreement, the period of time may not be
4 more than 3 years."

5 **Section 6.** Section 49-2-509, MCA, is amended to read:

6 "49-2-509. Filing a complaint in district court. (1)

7 Except as provided in subsection (2) or with respect to
8 complaints alleging a violation of 49-2-305, the commission
9 staff shall, at the request of either party, issue a letter
10 entitling the complainant to file a discrimination action in
11 district court if:

12 (a) the commission has not yet held a contested case
13 hearing pursuant to 49-2-505; and

14 (b) 12 months have elapsed since the complaint was
15 filed.

16 (2) The commission staff may refuse to permit removal
17 of a case to district court if:

18 (a) the party requesting removal fails to comply with
19 the terms of a lawful subpoena issued in the investigative
20 process;

21 (b) the party requesting removal has waived the right
22 to request removal to the district court;

23 (c) more than 30 days have elapsed since service of
24 notice of hearing under 49-2-505, unless the commission
25 fails to schedule a hearing to be held within 90 days of

1 service of notice of hearing; or

2 (d) the party requesting removal has unsuccessfully
3 attempted through court litigation to prevent the commission
4 staff from investigating the complaint.

5 (3) The commission staff may dismiss a complaint filed
6 under 49-2-501 and allow the complainant to file a
7 discrimination action in district court if:

8 (a) the commission staff determines that the commission
9 lacks jurisdiction over the complaint;

10 (b) the complainant fails to cooperate in the staff's
11 investigation of the complaint or fails to keep the
12 commission advised of changes of address; or

13 (c) the commission staff determines that the
14 allegations of the complaint are not supported by
15 substantial evidence.

16 (4) A decision of the commission staff to dismiss a
17 complaint or to refuse to permit removal to the district
18 court is final unless a party seeks review by filing
19 objections within 14 days after the decision is served on
20 him. The commission shall review the decision in informal
21 proceedings under 2-4-604, except that 2-4-604(5) applies
22 only to review of a refusal to permit removal.

23 (5) Within 90 days after receipt of a notice of
24 dismissal under subsection (3) or an order under subsection
25 (4) of affirmance of a dismissal, whichever occurs later, or

of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If Except as provided in [section 2], if the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim shall be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."

~~Section 7. Section 49-3-306, MCA, is amended to read:~~

~~"49-3-306. Filing complaints. (1) Except as provided in~~

~~subsection (2), a complaint under this chapter must be filed with the commission within 180 days 1 year after the alleged unlawful discriminatory practice occurred or was discovered.~~

~~(2) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days 1 year after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 405 days after the alleged unlawful discriminatory practice occurred or was discovered.~~

~~(3) A complaint not filed within the times set forth in this section may not be considered by the commission."~~

Section 7. Section 49-3-306, MCA, is amended to read:

"49-3-306. Temporary relief by court order. (1) At any time after a complaint is filed with the commission under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this

64

practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

NEW SECTION. Section 3. Intimidation or interference in the right to be free from housing discrimination -- penalties. (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale,

purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because he is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because he is or has been, or in order to discourage him or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because he is or has lawfully participated in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than \$1,000 or imprisoned

for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life.

Section 9. Section 49-4-212, MCA, is amended to read:

"49-4-212. Access to housing accommodations. (1) Blind, visually handicapped, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

~~(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind, visually handicapped, or deaf person than for a person who is not so disabled."~~

NEW SECTION. **Section 10.** Codification instruction. (1)

[Section 2] is intended to be codified as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, part 5, apply to [section 2].

(2) [Section 9 8] is intended to be codified as an integral part of Title 49, chapter 2, part 6, and the provisions of Title 49, chapter 2, part 6, apply to [section 9 8].

-End-

-25-

1 SENATE BILL NO. 199

2 INTRODUCED BY B. BROWN, YELLOWTAIL, J. RICE, STRIZICH

3 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE HOUSING
6 DISCRIMINATION LAWS TO MAKE THEM SUBSTANTIALLY EQUIVALENT TO
7 FEDERAL DISCRIMINATION LAW; PROVIDING PROCEDURES AND
8 REMEDIES FOR ENFORCEMENT OF HOUSING DISCRIMINATION LAWS;
9 PROHIBITING INTIMIDATION OR INTERFERENCE IN THE RIGHT TO BE
10 FREE FROM HOUSING DISCRIMINATION; PROVIDING PENALTIES; AND
11 AMENDING SECTIONS 49-2-305, 49-2-501, 49-2-503, 49-2-506,
12 49-2-509, 49-3-304, 49-3-306, AND 49-4-212, MCA."

13
14 WHEREAS, the Legislature has previously included housing
15 discrimination as a subject of discrimination law in the
16 Montana Human Rights Act; and

17 WHEREAS, the housing discrimination laws in the Montana
18 Human Rights Act were modeled after the federal Fair Housing
19 Act of 1968; and

20 WHEREAS, in 1988, Congress substantially amended the
21 federal Fair Housing Act, enforced by the Department of
22 Housing and Urban Development; and

23 WHEREAS, the Montana Commission for Human Rights
24 processes housing discrimination complaints in Montana that
25 allege a violation of both the Montana Human Rights Act and

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 20, 1991, at 8:12 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Keller

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 379

Motion: REP. BROWN MOVED SB 379 DO BE CONCURRED IN.

Motion: REP. WYATT moved to amend SB 379. EXHIBIT 1

Discussion:

REP. WYATT stated that the training program of probation and parole officers is inadequate. She stated that most of her amendment addresses some of the training and the other part of

bought insurance doesn't waive that immunity.

Motion/Vote: REP. LEE MADE A SUBSTITUTE MOTION to amend SB 154 with the amendment proposed by John MacMaster. Motion failed on a tie vote. EXHIBIT 4

Vote: Motion failed 5 to 13. EXHIBIT 5

Motion/Vote: REP. GOULD MOVED SB 154 DO BE CONCURRED IN AS AMENDED. Motion carried 19 to 1 with Rep. Clark voting no.

HEARING ON SB 198
CORRECT HOUSING DISCRIMINATION CITATION ERROR

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that this was requested by the Commission on Human Rights. He stated that SB 198 corrects an incorrect citation in the Federal Law. The 1990 Legislature enacted legislature that prohibited discrimination in housing for families with children, but the legislature recognized an exception to that in places where housing is primarily for Senior Citizens. He stated that in the citation that reflected that exception was adopted by reference and cited in the law. "The problem was that it was an incorrect citation." He stated that this bill corrects that citation and makes the bill retroactive on its applicability in the event someone refused to allow a family with children from living in an apartment complex that was for Senior Citizens only.

Proponents' Testimony: NONE

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON SB 199
AMEND HOUSING DISCRIMINATION LAWS TO CONFORM TO FEDERAL LAW

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that this bill was at the request of the Human Rights Commission. He stated that SB 199 is an act that amends housing discrimination laws and makes them substantially equivalent to Federal Discrimination Laws.

Proponents' Testimony:

Ann MacIntyre, Administrator - State's Human Rights Commission,

gave written testimony in favor of SB 199. EXHIBIT 6

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON SB 87

INTERPLEADER ACTION IN JUSTICE'S COURT SMALL CLAIMS DIVISION

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that SB 87 provides for an interpleader action in Justice's Court small claims procedures. He stated that this bill will allow a third party to hold the money in a real estate deal so the realtor will not be subject to a law suit. He stated that there is some ambiguity in the law about where the bidding for this rests and the purpose of SB 87, is to clarify that.

Proponents' Testimony:

Tom Hopgood, Montana Association of Realtors, stated that a bill was passed in 1987 for the purpose of allowing interpleader actions to proceed in courts of limited jurisdiction. He explained that an interpleader action is where somebody has a fund of money and doesn't know who to pay it to in the case of a realtors deal going bad. The interpleader action provides that the third party can deposit the money to the court and the court will issue a summons to both the buyer and the seller and setforth their claims and the court then determines who is actually entitled to the funds. Mr. Hopgood said, "It is a good bill as it stands now and shouldn't bring any difficulty to anybody."

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON SB 125

REQUIRE LOAN AND CREDIT AGREEMENTS TO
BE IN WRITING TO BE ENFORCEABLE

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that SB 125 has been in the Legislature before this session. He stated that SB 125 is an act requiring loan and credit agreements to be in writing to be enforceable. "The purpose of this legislation is to avoid litigation and misunderstanding by putting borrowers and lenders

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3.20.91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	///		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER			/
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

Summary of Senate Bill 199
Prepared by Anne L. MacIntyre
March 20, 1991

SB199 makes the following substantive changes in the housing discrimination provisions of the Human Rights Act:

1. Specific provisions are added concerning housing discrimination on the basis of handicap, including:

- a requirement that housing providers permit reasonable modifications to housing accommodations, at the expense of the handicapped person. Page 5, lines 13-23.

- a requirement that housing providers make reasonable accommodations in rules, policies, practices, and services. Page 5, line 24 through page 6, line 2.

- a requirement that all new construction of housing accommodations with four or more units be done in a manner to make the housing accessible and adaptable. Page 6, line 2, through page 7, line 5.

2. A provision is added making it unlawful to represent because of race, sex, etc., that a housing accommodation is unavailable when it is in fact available. Page 3, line 25 through page 4, line 5.

3. A provision is added prohibiting blockbusting, that is to induce a person to sell or rent a housing accommodation or property based on representations that a person of a particular race, sex, etc. is moving into the neighborhood. Page 4, lines 6-11.

4. A provision is added making it clear that discrimination on the basis of race, sex, etc. is prohibited in real estate related transactions such as financing, selling, brokering, and appraising. Page 7, line 12 through page 8, line 3. Although section 49-2-306, MCA, prohibits discrimination in financing and credit transactions on the basis of race, sex, etc., it is a poorly drafted section and would need to be completely reworked if we were to amend it for this purpose. Further, section 49-2-306, MCA does not cover real estate related transactions other than financing and does not prohibit discrimination on the basis of familial status.

5. A provision is added prohibiting discrimination in membership or participation in real estate industry organizations on the basis of race, sex, etc. Page 8, lines 4-13.

6. A provision is added prohibiting coercion, intimidation, etc. against a person attempting to exercise his or her rights to be free of housing discrimination on the basis of race, sex, etc. Page 8, lines 14-19. While this provision may seem somewhat duplicative of the provisions of sections 49-2-301 and 49-2-302, MCA, it is added here to insure that we have a state provision which mirrors the federal.

7. Specific criminal sanctions for intimidation or interference in the right to be free of housing discrimination are added. Page 23, line 15 through page 25, line 6.

8. Former subsection (c) of 49-2-305, MCA is amended. At the present time, this provision makes it unlawful to make a written or oral inquiry or record of the race, sex, etc. of a person seeking housing. As amended, the provision makes it unlawful to make such an inquiry for the purpose of discriminating on the basis of race, sex, etc., unless based on reasonable grounds. The amended provision would also permit the making of a record. There can be valid reasons for making the inquiry or record, even when relying on the information for a discriminatory purpose would be unlawful. The existence of the existing provision is a detriment to the efforts of some real estate industry groups to engage in voluntary affirmative marketing and efforts to monitor the existence of housing discrimination. Page 3, lines 11-15. The reasonable grounds language is at page 2, line 22.

9. The bill also amends section 49-4-212 by deleting a subsection in existing law which states that a housing provider is not required to modify property in any way for a person with a handicap because this provision conflicts with the provisions of the bill. Page 25, lines 13-17.

SB199 also makes a number of procedural changes in the laws prohibiting discrimination. The following are the most significant:

1. A provision is added allowing the Commission to award civil penalties after a finding of unlawful housing discrimination. The penalties are discretionary and the dollar amounts are maximum amounts. Page 10, line 3 through page 11, line 6. Under the federal law, these penalties are placed into the U.S. Treasury, not awarded to the complainant. A similar provision is appropriate here, with the penalties to be placed in an earmarked revenue account. Page 16, lines 2-5.

2. A provision is added allowing either party to make an election for a trial of the housing discrimination claim

in a civil action instead of in a hearing before the Commission. Page 11, line 22 through page 12, line 20. The Human Rights Act presently has a provision something like this at section 49-2-509, MCA. However, section 49-2-509, MCA, differs from the federal law in enough respects that it seems more appropriate to except housing discrimination claims from the provisions of section 49-2-509, MCA (at page 18, lines 23-24) and establish a procedure specifically for housing complaints. Note that if the Commission staff finds cause to believe discrimination occurred as a result of its investigation, the Commission staff must represent the complainant in the civil action. This is a specific requirement of the HUD regulations.

3. A provision is added allowing the complainant to pursue a civil action for housing discrimination without recourse to the Commission. Page 12, line 21 through page 14, line 18. The court is specifically authorized to award punitive damages. Page 14, lines 19-25.

4. The statute of limitations is modified to increase the time for filing to 1 year. Page 9, line 20 through page 10, line 2. The bill originally proposed to increase the statute of limitations for all complaints from 180 days to one year but the Senate Judiciary Committee felt this was outside the scope and purpose of the bill and amended it so that the statute of limitations is increased only for housing complaints.

5. The authority of a court to award temporary injunctive relief in a case of alleged discrimination is modified to make it conform to the normal statutory rules governing such actions. Page 17, line 12 through page 18, line 8 and page 22, line 18 through page 23, line 14.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB# 199
DATE 3-20-91 SPONSOR(S) SEN. Brauer

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Kate Cholewa	MT Womens Lobby	X	
Anne MacIntyre	Human Rights Commission	X	
Marcia Deo	Int. Law. Forum Coal.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 21, 1991, at
10:12 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 199

Motion: REP. WYATT MOVED SB 199 DO BE CONCURRED IN. Motion
carried unanimously.

EXECUTIVE ACTION ON SB 154

Motion: REP. WHALEN MOVED TO RECONSIDER SB 154.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-21-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	/		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

through
Domine

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 199 (third reading copy -- blue) be concurred in.

Signed: *[Signature]*

Bill Stritzich, Chairman

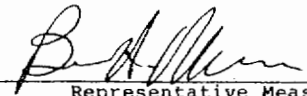
Carried by: Rep. ~~James~~ *[Signature]*

BEST COPY
AVAILABLE

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 199
Representative Measure

March 26, 1991 11:51 am
Page 1 of 3

Mr. Chairman: I move to amend Senate Bill 199 (third reading copy -- blue).

Signed: 
Representative Measure

And, that such amendments to Senate Bill 199 read as follows:

1. Title, line 10.
Following: "DISCRIMINATION"
Insert: "EXTENDING THE TIME TO FILE ALL COMPLAINTS UNDER THE
DISCRIMINATION LAWS TO BE CONSISTENT WITH THE TIME LIMITS
FOR COMPLAINTS OF HOUSING DISCRIMINATION;"
Following: "PENALTIES"
Strike: "AND"
2. Title, line 12.
Following: "~~49-3-304~~"
Insert: "49-3-904"
Following: "MCA"
Insert: "; AND REPEALING 49-2-401 AND 49-3-105, MCA"
3. Page 2, lines 22 and 23.
Strike: "Except" on line 22 through "it" on line 23.
Insert: "It"
4. Page 2, line 24.
Following: "lessee"
Insert: "or"
Following: "manager"
Insert: "having the right to sell, lease, or rent a housing
accommodation or improved or unimproved property"
5. Page 2, line 24 through page 3 line 1.
Strike: "having" on line 24 through "property" on line 1
6. Page 3, lines 16 and 17.
Following: "INQUIRY"
Strike: "FOR THE PURPOSE OF DISCRIMINATING ON THE BASIS"
7. Page 3, line 20.
Following: "RENT"

Strike: "THE"
Insert: "a"
Following: "PROPERTY"
Insert: "for the purpose of discriminating on the basis of sex,
race, creed, religion, age, familial status, physical or
mental handicap, color, or national origin"

8. Page 3, line 21.
Following: "or to"
Insert: "otherwise"
Following: "make"
Insert: "unavailable or deny"

9. Page 3, line 22.
Following: "property"
Strike: "unavailable"

10. Page 4.
Strike: lines 12 through 15 in their entirety
Insert: "(2) The rental of sleeping rooms in a private residence
designed for single family occupancy in which the lessor
also resides is excluded from the provisions of subsection
(1), provided that the lessor rents no more than 3 sleeping
rooms within the residence."

11. Page 6, line 7.
Following: line 6
Insert: "(A) the housing accommodation has at least one
accessible building entrance on an accessible route;"
Renumber: subsequent subsections

12. Page 6, line 10.
Following: "provides"
Insert: "that all"

13. Page 6, line 11.
Following: "accommodation"
Insert: "are"

14. Page 9, line 8.
Following: "of"
Strike: "this section"
Insert: "subsection (1)"

15. Page 10, line 8.
Following: "remedies"
Insert: "and injunctive and equitable relief"

16. Page 14, line 23.

April 1, 1991
Page 2 of 3

ADOPT

REJECT

651150CW.Hpd

HOUSE
SB 199

April 1, 1991
Page 3 of 3

Following: "remedies"
Insert: "and injunctive and equitable relief"

17. Page 16, line 18.
Following: "in"
Strike: "SECTION 2] AND"

18. Page 16, line 21.
Following: "~~year~~"
Strike: "180 DAYS"
Insert: "1 year"

19. Page 17, line 3.
Strike: "180 DAYS"
Insert: "1 year"

20. Page 17, line 8.
Strike: "300"
Insert: "485"

21. Page 22.
Following: line 17
Insert: " Section 7. Section 49-3-304, MCA, is amended to read:
"49-3-304. Filing complaints. (1) Except as provided in
subsection (2), a complaint under this chapter must be filed with
the commission within ~~180 days~~ 1 year after the alleged unlawful
discriminatory practice occurred or was discovered.

(2) If the complainant has initiated efforts to resolve the
dispute underlying the complaint by filing a grievance in
accordance with any grievance procedure established by a
collective bargaining agreement, contract, or written rule or
policy, the complaint may be filed within ~~180 days~~ 1 year after
the conclusion of the grievance procedure if the grievance
procedure concludes within 120 days after the alleged unlawful
discriminatory practice occurred or was discovered. If the
grievance procedure does not conclude within 120 days, the
complaint must be filed within 300 days after the alleged
unlawful discriminatory practice occurred or was discovered.

(3) A complaint not filed within the times set forth in
this section may not be considered by the commission."

Renumber: subsequent sections

22. Page 25.
Following: line 17
Insert: "SECTION 11. REPEALER. Sections 49-2-401 and 49-3-105,
MCA are repealed."
Renumber: subsequent section

1 SENATE BILL NO. 199

2 INTRODUCED BY B. BROWN, YELLOWTAIL, J. RICE, STRIZICH
3 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE HOUSING
6 DISCRIMINATION LAWS TO MAKE THEM SUBSTANTIALLY EQUIVALENT TO
7 FEDERAL DISCRIMINATION LAW; PROVIDING PROCEDURES AND
8 REMEDIES FOR ENFORCEMENT OF HOUSING DISCRIMINATION LAWS;
9 PROHIBITING INTIMIDATION OR INTERFERENCE IN THE RIGHT TO BE
10 FREE FROM HOUSING DISCRIMINATION; EXTENDING THE TIME TO FILE
11 ALL COMPLAINTS UNDER THE DISCRIMINATION LAWS TO BE
12 CONSISTENT WITH THE TIME LIMITS FOR COMPLAINTS OF HOUSING
13 DISCRIMINATION; PROVIDING PENALTIES; AND AMENDING SECTIONS
14 49-2-305, 49-2-501, 49-2-503, 49-2-506, 49-2-509, 49-3-304,
15 49-3-306, 49-3-904, AND 49-4-212, MCA; AND REPEALING
16 SECTIONS 49-2-401 AND 49-3-105, MCA."
17

18 WHEREAS, the Legislature has previously included housing
19 discrimination as a subject of discrimination law in the
20 Montana Human Rights Act; and

21 WHEREAS, the housing discrimination laws in the Montana
22 Human Rights Act were modeled after the federal Fair Housing
23 Act of 1968; and

24 WHEREAS, in 1988, Congress substantially amended the
25 federal Fair Housing Act, enforced by the Department of

1 Housing and Urban Development; and

2 WHEREAS, the Montana Commission for Human Rights
3 processes housing discrimination complaints in Montana that
4 allege a violation of both the Montana Human Rights Act and
5 the federal Fair Housing Act; and

6 WHEREAS, the Montana Commission for Human Rights
7 receives a substantial portion of its funding from contracts
8 with the Department of Housing and Urban Development for
9 processing federal housing discrimination cases; and

10 WHEREAS, after January 13, 1992, the Department of
11 Housing and Urban Development will no longer contract with
12 any state fair housing agency that does not enforce a state
13 law providing rights and remedies substantially equivalent
14 to those provided by the federal Fair Housing Act; and

15 WHEREAS, the rights and remedies provided by the Montana
16 Human Rights Act are not presently substantially equivalent
17 to those provided by the federal Fair Housing Act.

18 THEREFORE, it is appropriate for the Legislature to
19 amend the housing discrimination laws in the Montana Human
20 Rights Act to maintain substantial equivalency with the
21 federal Fair Housing Act.
22

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 Section 1. Section 49-2-305, MCA, is amended to read:

25 "49-2-305. Discrimination in housing -- exemptions. (1)

~~Except when the distinction is based on reasonable grounds,~~
 it IT is an unlawful discriminatory practice for the owner,
 lessee, OR manager, HAVING THE RIGHT TO SELL, LEASE, OR RENT
A HOUSING ACCOMMODATION OR IMPROVED OR UNIMPROVED PROPERTY
 or FOR ANY other person ~~having the right to sell, lease, or~~
~~rent a housing accommodation or improved or unimproved~~
 property:

(a) to refuse to sell, lease, or rent the housing
 accommodation or property to a person because of sex, race,
 creed, religion, color, age, familial status, physical or
 mental handicap, or national origin;

(b) to discriminate against a person because of sex,
 race, creed, religion, age, familial status, physical or
 mental handicap, color, or national origin in a term,
 condition, or privilege relating to the use, sale, lease, or
 rental of the housing accommodation or property;

~~(c) to make a written or oral inquiry or record of the~~
~~sex, race, creed, religion, age, physical or mental~~
~~handicap, color, or national origin of a person seeking to~~
~~buy, lease, or rent the housing accommodation or property;~~
 or

(C) TO MAKE AN INQUIRY FOR THE PURPOSE OF
DISCRIMINATING ON THE BASIS OF THE SEX, RACE, CREED,
RELIGION, AGE, FAMILIAL STATUS, PHYSICAL OR MENTAL HANDICAP,
COLOR, OR NATIONAL ORIGIN OF A PERSON SEEKING TO BUY, LEASE,

OR RENT THE A HOUSING ACCOMMODATION OR PROPERTY FOR THE
PURPOSE OF DISCRIMINATING ON THE BASIS OF SEX, RACE, CREED,
RELIGION, AGE, FAMILIAL STATUS, PHYSICAL OR MENTAL HANDICAP,
COLOR, OR NATIONAL ORIGIN;

~~(d)(D)~~ to refuse to negotiate for a sale or to
 OTHERWISE make UNAVAILABLE OR DENY a housing accommodation
 or property unavailable because of sex, race, creed,
 religion, age, familial status, physical or mental handicap,
 color, or national origin;

~~(d)(E)~~ to represent to a person that a housing
 accommodation or property is not available for inspection,
 sale, or rental because of that person's sex, race, creed,
 religion, age, familial status, physical or mental handicap,
 color, or national origin when the housing accommodation or
 property is in fact available; or

~~(e)(F)~~ for profit, to induce or attempt to induce a
 person to sell or rent a housing accommodation or property
 by representations regarding the entry or prospective entry
 into the neighborhood of a person or persons of a particular
 sex, race, creed, religion, age, familial status, physical
 or mental handicap, color, or national origin.

~~(2) A private residence designed for single-family~~
~~occupancy in which sleeping space is rented to guests and in~~
~~which the landlord also resides is excluded from the~~
~~provisions of subsection (1);~~

(2) THE RENTAL OF SLEEPING ROOMS IN A PRIVATE RESIDENCE DESIGNED FOR SINGLE-FAMILY OCCUPANCY IN WHICH THE LESSOR ALSO RESIDES IS EXCLUDED FROM THE PROVISIONS OF SUBSECTION (1), PROVIDED THAT THE LESSOR RENTS NO MORE THAN THREE SLEEPING ROOMS WITHIN THE RESIDENCE.

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental handicap of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4),

discrimination because of physical or mental handicap includes:

(a) refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) THE HOUSING ACCOMMODATION HAS AT LEAST ONE ACCESSIBLE BUILDING ENTRANCE ON AN ACCESSIBLE ROUTE;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable

83

1 by handicapped persons;

2 †B†(C) provides THAT ALL doors designed to allow
 3 passage into and within all premises within the housing
 4 accommodation ARE sufficiently wide to allow passage by
 5 handicapped persons in wheelchairs; and

6 †E†(D) ensures that all premises within the housing
 7 accommodation contain the following features of adaptive
 8 design:

9 (I) an accessible route into and through the housing
 10 accommodation;

11 (II) light switches, electrical outlets, thermostats,
 12 and other environmental controls in accessible locations;

13 (III) reinforcements in bathroom walls to allow later
 14 installation of grab bars; and

15 (IV) usable kitchens and bathrooms that allow an
 16 individual in a wheelchair to maneuver about the space;

17 (ii) a covered multifamily housing accommodation that
 18 does not have at least one building entrance on an
 19 accessible route because it is impractical to do so due to
 20 the terrain or unusual characteristics of the site is not
 21 required to comply with the requirements of subsection
 22 (5)(c)(i).

23 (6) For purposes of subsection (5), the term "covered
 24 multifamily housing accommodation" means:

25 (a) a building consisting of four or more dwelling

1 units if the building has one or more elevators; and

2 (b) ground floor units in a building consisting of four
 3 or more dwelling units.

4 (7) (a) It is an unlawful discriminatory practice for
 5 any person or other entity whose business includes engaging
 6 in residential real estate-related transactions to
 7 discriminate because of sex, race, creed, religion, age,
 8 familial status, physical or mental handicap, color, or
 9 national origin against a person in making available a
 10 transaction or in the terms or conditions of a transaction.

11 (b) For purposes of this subsection (7), the term
 12 "residential real estate-related transaction" means any of
 13 the following:

14 (i) the making or purchasing of loans or providing
 15 other financial assistance:

16 (A) for purchasing, constructing, improving, repairing,
 17 or maintaining a housing accommodation or property; or

18 (B) secured by residential real estate; or

19 (ii) the selling, brokering, or appraising of
 20 residential real property.

21 (8) It is an unlawful discriminatory practice to deny a
 22 person access to or membership or participation in a
 23 multiple-listing service; real estate brokers' organization;
 24 or other service, organization, or facility relating to the
 25 business of selling, leasing, or renting housing

1 accommodations or property or to discriminate against the
 2 person in the terms or conditions of access, membership, or
 3 participation because of sex, race, creed, religion, age,
 4 familial status, physical or mental handicap, color, or
 5 national origin.

6 (9) It is an unlawful discriminatory practice to
 7 coerce, intimidate, threaten, or interfere with a person in
 8 the exercise or enjoyment of or because of his having
 9 exercised or enjoyed or having aided or encouraged any other
 10 person in the exercise or enjoyment of a right granted or
 11 protected by this section.

12 (10) The prohibitions of this section against
 13 discrimination because of age and familial status do not
 14 extend to housing for older persons. "Housing for older
 15 persons" means housing:

16 (a) provided under any state or federal program
 17 specifically designed and operated to assist elderly
 18 persons;

19 (b) intended for, and solely occupied by, persons 62
 20 years of age or older; or

21 (c) intended and operated for occupancy by at least one
 22 person 55 years of age or older per unit in accordance with
 23 the provisions of 42 U.S.C. 3605(b)(2)(C) and (3) and 24
 24 C.F.R. 100.304, as those sections read on October 1, 1989.

25 (11) The prohibitions of this-section SUBSECTION (1)

1 against discrimination because of age and familial status do
 2 not extend to rooms or units in dwellings containing living
 3 quarters occupied or intended to be occupied by no more than
 4 two families living independently of each other, if the
 5 owner actually maintains and occupies one of the living
 6 quarters as his residence.

7 (12) For purposes of this section, "familial status"
 8 means having a child or children who live or will live with
 9 a person. A distinction based on familial status includes
 10 one that is based on the age of a child or children who live
 11 or will live with a person."

12 **NEW SECTION. Section 2. Procedures and remedies for**
 13 **enforcement of housing discrimination laws. (1) A COMPLAINT**
 14 **MAY BE FILED WITH THE COMMISSION BY OR ON BEHALF OF A PERSON**
 15 **CLAIMING TO BE AGGRIEVED BY ANY DISCRIMINATORY PRACTICE**
 16 **PROHIBITED BY 49-2-305. THE COMPLAINT MUST BE IN WRITTEN**
 17 **FORM AND MUST BE FILED WITH THE COMMISSION WITHIN 1 YEAR**
 18 **AFTER THE ALLEGED UNLAWFUL DISCRIMINATORY PRACTICE OCCURRED**
 19 **OR WAS DISCOVERED.**

20 (2) (a) Except as provided in subsection (b)
 21 (2)(B), if the commission, in a hearing under 49-2-505,
 22 finds that a person, institution, entity, or agency against
 23 whom a complaint was filed under this part has engaged in a
 24 discriminatory practice in violation of 49-2-305, the
 25 commission may, in addition to the remedies AND INJUNCTIVE

1 AND EQUITABLE RELIEF provided by 49-2-506, to vindicate the
2 public interest, assess a civil penalty:

3 (i) in an amount not exceeding \$10,000 if the
4 respondent has not been found to have committed any prior
5 discriminatory housing practice in violation of 49-2-305;

6 (ii) in an amount not exceeding \$25,000 if the
7 respondent has been found to have committed one other
8 discriminatory housing practice in violation of 49-2-305
9 during the 5-year period ending on the date of the filing of
10 the complaint; and

11 (iii) in an amount not exceeding \$50,000 if the
12 respondent has been found to have committed two or more
13 discriminatory housing practices in violation of 49-2-305
14 during the 7-year period ending on the date of the filing of
15 the complaint.

16 (b) If the acts constituting the discriminatory housing
17 practice that is the object of the complaint are committed
18 by the same natural person who has been previously found to
19 have committed acts constituting a discriminatory housing
20 practice, the civil penalties provided in subsections
21 ~~(1)(a)(i)-(1)(a)(iii)~~ (2)(A)(II) AND (2)(A)(III) may be
22 imposed without regard to the period of time within which
23 any prior discriminatory housing practice occurred.

24 ~~(2)(3)~~ In the case of an order with respect to a
25 discriminatory housing practice in violation of 49-2-305

1 that occurred in the course of a business subject to
2 licensing or regulation by a governmental agency, the
3 commission shall, no later than 30 days after the date of
4 the issuance of the order or, if the order is judicially
5 reviewed, no later than 30 days after the order is in
6 substance affirmed:

7 (a) send copies of the findings of fact, the
8 conclusions of law, and the order to the licensing or
9 regulatory agency; and

10 (b) recommend to the licensing or regulatory agency
11 appropriate disciplinary action, including, where
12 appropriate, the suspension or revocation of the license of
13 the respondent.

14 ~~(3)(4)~~ (a) When a complaint is filed under 49-2-305, a
15 complainant, respondent, or aggrieved person on whose behalf
16 the complaint was filed may elect to have the claims decided
17 in a civil action in lieu of a hearing under 49-2-505. The
18 election must be made no later than 20 days after receipt by
19 the electing person of service of notice of certification
20 for hearing under 49-2-505. The person making the election
21 shall give notice to the commission and to all other
22 complainants and respondents to whom the complaint relates.
23 Within 30 days after the election is made, the commission
24 shall commence a civil action in an appropriate district
25 court on behalf of the aggrieved person if the commission

1 staff has made a finding that the allegations of the
2 complaint are supported by substantial evidence. If the
3 commission staff has made a finding that the allegations of
4 the complaint are not supported by substantial evidence, the
5 complainant may commence a civil action in an appropriate
6 district court in accordance with subsection ~~(4)~~ (5). An
7 aggrieved person with respect to the issues to be determined
8 in a civil action brought by the commission staff may
9 intervene in the action.

10 (b) The commission may not continue administrative
11 proceedings on a complaint after an election is made in
12 accordance with subsection ~~(3)(a)~~ (4)(A).

13 ~~(4)~~ (5) (a) An aggrieved person may commence a civil
14 action in an appropriate district court within 2 years after
15 an alleged unlawful discriminatory practice under 49-2-305
16 occurred or was discovered or within 2 years of the breach
17 of a conciliation agreement entered into under 49-2-504 in a
18 case alleging a violation of 49-2-305. The computation of
19 the 2-year period does not include any time during which an
20 administrative proceeding under this title was pending with
21 respect to a complaint alleging a violation of 49-2-305. The
22 tolling of the time limit for commencing a civil action does
23 not apply to actions arising from breach of a conciliation
24 agreement.

25 (b) An aggrieved person may commence a civil action

1 under this subsection for a violation of 49-2-305 whether or
2 not a complaint has been filed under 49-2-501 and without
3 regard to the status of a complaint filed with the
4 commission except as provided in subsection ~~(4)(d)~~ (5)(D).
5 If the commission has obtained a conciliation agreement with
6 the consent of the aggrieved person, an action may not be
7 filed under this subsection by the aggrieved person
8 regarding the alleged violation of 49-2-305 that forms the
9 basis for the complaint except for the purpose of enforcing
10 the terms of the agreement.

11 (c) The commission may not continue administrative
12 proceedings on a complaint after the beginning of a trial of
13 a civil action commenced by the aggrieved party under this
14 subsection ~~(4)~~ (5) seeking relief with respect to the same
15 alleged violation of 49-2-305.

16 (d) An aggrieved person may not commence a civil action
17 under this subsection ~~(4)~~ (5) with respect to an alleged
18 violation of 49-2-305 if the commission has commenced a
19 hearing on the record under 49-2-505 regarding the same
20 complaint.

21 (e) Upon application by a person alleging a violation
22 of 49-2-305 in a civil action under this subsection ~~(4)~~ (5)
23 or by a person against whom the violation is alleged, the
24 court may:

25 (i) appoint an attorney for the applicant; or

1 (ii) authorize the commencement or continuation of a
2 civil action without the payment of fees, costs, or security
3 if, in the opinion of the court, the applicant is
4 financially unable to bear the costs of the civil action.

5 (f) Upon timely application, the commission may
6 intervene in a civil action brought under this subsection
7 ~~†4†~~ (5) if the commission certifies that the case is of
8 general public importance. Upon intervention, the commission
9 may obtain the same relief that would be available to the
10 commission under subsection ~~†6†~~ (7).

11 ~~†5†~~(6) If the court finds that a person, institution,
12 entity, or agency against whom a complaint was filed under
13 this section has engaged in a discriminatory practice in
14 violation of 49-2-305, the court may, in addition to the
15 other remedies AND INJUNCTIVE AND EQUITABLE RELIEF provided
16 under 49-2-506, award punitive damages. The court may also
17 award attorney fees to the prevailing party.

18 ~~†6†~~(7) (a) Whenever the commission has reasonable cause
19 to believe that a person or group of persons is engaged in a
20 pattern or practice in violation of 49-2-305 or that a group
21 of persons has been discriminated against in violation of
22 49-2-305 and the denial raises an issue of general public
23 importance, the commission may commence a civil action in an
24 appropriate district court. The commission may also commence
25 a civil action in any appropriate district court for relief

1 regarding breach of a conciliation agreement in a case
2 regarding an alleged violation of 49-2-305 if the commission
3 is a party to the agreement.

4 (b) The commission may file a civil action under this
5 subsection ~~†6†~~ (7) within 18 months after the alleged breach
6 of the conciliation agreement or unlawful discriminatory
7 practice occurred or was discovered.

8 (c) In a civil action under this subsection ~~†6†~~ (7),
9 the court may, in addition to the remedies provided under
10 49-2-506, assess a civil penalty against the respondent:

11 (i) in an amount not exceeding \$50,000 for a first
12 violation; and

13 (ii) in an amount not exceeding \$100,000 for any
14 subsequent violation.

15 (d) Upon timely application, a person may intervene in
16 a civil action under this subsection ~~†6†~~ (7) that involves
17 an alleged violation of 49-2-305 with respect to which the
18 intervenor is an aggrieved person.

19 ~~†7†~~(8) Civil penalties under this section must be paid
20 to the state treasurer to be deposited in an account in the
21 state ' special revenue fund to be used by the commission for
22 housing discrimination enforcement.

23 **Section 3.** Section 49-2-501, MCA, is amended to read:

24 "49-2-501. Filing complaints. (1) A complaint may be
25 filed by or on behalf of any person claiming to be aggrieved

by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) (a) Except as provided in ~~{SECTION---2}---AND~~ subsection (2)(b) ~~OF--THIS-SECTION~~, a complaint under this chapter must be filed with the commission within ~~100-days~~ 1 year ~~100---DAYS~~ 1 YEAR after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within ~~100-days~~ 1-year ~~100---DAYS~~ 1 YEAR after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within ~~300~~ 485 ~~360~~ 485 days after the alleged unlawful

discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein may not be considered by the commission."

Section 4. Section 49-2-503, MCA, is amended to read:

"49-2-503. Temporary relief by court order. ~~{1}~~ At any time after a complaint is filed under this chapter alleging an-unlawful-discriminatory-practice, the-commission-may-file a-petition-in-the-district-court-in-the-county-in-which-the subject--of-the-complaint-occurs-or-in-the-county-in-which-a respondent-resides-or-transacts-business-seeking-appropriate temporary-relief-against-this-practice, including--an--order restraining--the--respondent--from-interfering-in-any-manner with-an-order-the-commission-may-enter-with-respect--to--the complaint-

~~{2}~~--The--court--has--the--power--to-grant-the-temporary relief-or-restraining-order-it-considers--just--and--proper. However,--no-relief-or-order-extending-beyond-14-days-may-be granted-except-by-consent--of--the--respondent--or--upon--a finding--by--the--court--that--there--is-reasonable-cause-to believe-that-the-respondent-has--engaged--in--discriminatory practices, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

89

Section 5. Section 49-2-506, MCA, is amended to read:

"49-2-506. Procedure upon a finding of discrimination.

(1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The Except as provided in [section 2], the order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years."

Section 6. Section 49-2-509, MCA, is amended to read:

"49-2-509. Filing a complaint in district court. (1)

Except as provided in subsection (2) or with respect to complaints alleging a violation of 49-2-305, the commission

staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission

1 lacks jurisdiction over the complaint;

2 (b) the complainant fails to cooperate in the staff's
3 investigation of the complaint or fails to keep the
4 commission advised of changes of address; or

5 (c) the commission staff determines that the
6 allegations of the complaint are not supported by
7 substantial evidence.

8 (4) A decision of the commission staff to dismiss a
9 complaint or to refuse to permit removal to the district
10 court is final unless a party seeks review by filing
11 objections within 14 days after the decision is served on
12 him. The commission shall review the decision in informal
13 proceedings under 2-4-604, except that 2-4-604(5) applies
14 only to review of a refusal to permit removal.

15 (5) Within 90 days after receipt of a notice of
16 dismissal under subsection (3) or an order under subsection
17 (4) of affirmance of a dismissal, whichever occurs later, or
18 of a letter issued under subsection (1), the complainant may
19 petition the district court in the district in which the
20 alleged violation occurred for appropriate relief. If Except
21 as provided in [section 2], if the claimant fails to
22 petition the district court within 90 days after receipt of
23 the letter, notice, or order issued by the commission staff,
24 the claim shall be barred.

25 (6) If the district court finds, in an action under

1 this section, that a person, institution, entity, or agency
2 against whom or which a complaint was filed has engaged in
3 the unlawful discriminatory practice alleged in the
4 complaint, the court may provide the same relief as
5 described in 49-2-506 for a commission order. In addition,
6 the court may in its discretion allow the prevailing party
7 reasonable attorney fees.

8 (7) The provisions of this chapter establish the
9 exclusive remedy for acts constituting an alleged violation
10 of this chapter, including acts that may otherwise also
11 constitute a violation of the discrimination provisions of
12 Article II, section 4, of the Montana constitution or
13 49-1-102. No other claim or request for relief based upon
14 such acts may be entertained by a district court other than
15 by the procedures specified in this chapter."

16 ~~Section-7--Section-49-3-3047-MEA7-is-amended-to-read:~~

17 ~~"49-3-3047--Filing-complaints--(1)--Except-as-provided-in~~
18 ~~subsection-(2)--a-complaint-under-this-chapter-must-be-filed~~
19 ~~with-the-commission-within-180-days 1-year after-the-alleged~~
20 ~~unlawful-discriminatory-practice-occurred-or-was-discovered-~~

21 ~~(2)--If-the-complainant-has-initiated-efforts-to-resolve~~
22 ~~the-dispute-underlying-the-complaint-by-filing-a-grievance~~
23 ~~in--accordance-with-any-grievance-procedure-established-by-a~~
24 ~~collective-bargaining-agreement7-contract7-or--written--rule~~
25 ~~or-policy7-the-complaint-may-be-filed-within-180-days 1-year~~

after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

{3}--A complaint not filed within the times set forth in this section may not be considered by the commission."

SECTION 7. SECTION 49-3-304, MCA, IS AMENDED TO READ:

"49-3-304. Filing complaints. (1) Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within 180 days 1 year days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days 1 year after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days

after the alleged unlawful discriminatory practice occurred or was discovered.

(3) A complaint not filed within the times set forth in this section may not be considered by the commission."

Section 8. Section 49-3-306, MCA, is amended to read:

"49-3-306. Temporary relief by court order. {1} At any time after a complaint is filed with the commission under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

{2} The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for

1 preliminary injunctions in civil actions."

2 **NEW SECTION. Section 9.** Intimidation or interference

3 in the right to be free from housing discrimination --
4 penalties. (1) It is unlawful for a person, whether or not
5 acting under color of law, by force or threat of force to
6 purposefully or knowingly injure, intimidate, or interfere
7 with or attempt to injure, intimidate, or interfere with:

8 (a) a person because of sex, race, creed, religion,
9 age, familial status, physical or mental handicap, color, or
10 national origin and because the person is or has been:

11 (i) selling, purchasing, renting, leasing, financing,
12 or occupying or contracting or negotiating for the sale,
13 purchase, lease, rental, financing, or occupation of any
14 housing accommodation or property; or

15 (ii) applying for or participating in any service,
16 organization, or facility relating to the business of
17 selling, leasing, or renting housing accommodations or
18 property;

19 (b) a person because he is or has been:

20 (i) participating, without discrimination because of
21 sex, race, creed, religion, age, familial status, physical
22 or mental handicap, color, or national origin in any of the
23 activities, services, organizations, or facilities described
24 in this subsection (1); or

25 (ii) affording another person or class of persons

1 opportunity or protection to participate in those
2 activities, services, organizations, or facilities; or

3 (c) a citizen because he is or has been, or in order to
4 discourage him or any other citizen from, lawfully aiding or
5 encouraging other persons to participate in any of the
6 activities, services, organizations, or facilities described
7 in this subsection (1) or because he is or has lawfully
8 participated in speech or peaceful assembly opposing any
9 denial of the opportunity to participate.

10 (2) A person who violates a provision of subsection
11 (1):

12 (a) shall be fined not more than \$1,000 or imprisoned
13 for not more than 1 year, or both;

14 (b) if bodily injury results, shall be fined not more
15 than \$10,000 or imprisoned for not more than 10 years, or
16 both; or

17 (c) if death results, shall be subject to imprisonment
18 for any term of years or for life.

19 **Section 10.** Section 49-4-212, MCA, is amended to read:

20 "49-4-212. Access to housing accommodations. (1) Blind,
21 visually handicapped, and deaf persons are entitled to as
22 full and equal access as other members of the general public
23 to any housing accommodation offered for compensation in
24 this state.

25 ~~(2) Nothing in this section requires a person renting~~

1 ~~leasing,--or--providing--real--property--for--compensation--to~~
2 ~~modify--his--property--in--any--way--or--provide--a--higher--degree--of~~
3 ~~care--for--a--blind--visually--handicapped--or--deaf--person--than~~
4 ~~for--a--person--who--is--not--so--disabled--"~~

5 NEW SECTION. SECTION 11. REPEALER. SECTIONS 49-2-401
6 AND 49-3-105, MCA, ARE REPEALED.

7 NEW SECTION. Section 12. Codification instruction. (1)
8 [Section 2] is intended to be codified as an integral part
9 of Title 49, chapter 2, part 5, and the provisions of Title
10 49, chapter 2, part 5, apply to [section 2].

11 (2) [Section 9 8 9] is intended to be codified as an
12 integral part of Title 49, chapter 2, part 6, and the
13 provisions of Title 49, chapter 2, part 6, apply to [section
14 9 8 9].

-End-

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 199, met and considered Senate Bill No. 199 (reference copy - salmon).

We recommend that Senate Bill No. 199 (reference copy - salmon) be amended as follows:

1. Title, lines 10 through 13.
Following: "DISCRIMINATION;" on line 10
Strike: remainder of line 10 through "DISCRIMINATION;" on line 13
2. Title, line 14.
Following: "~~49-3-304,~~"
Insert: "49-3-106,"
3. Title, line 15.
Strike: "~~49-3-904,~~"
4. Page 4, lines 12 and 20.
Following: "sex,"
Insert: "marital status,"
5. Page 5, lines 2 and 4.
Strike: "LESSOR"
Insert: "owner"
6. Page 6, line 22.
Strike: "THE HOUSING ACCOMMODATION HAS"
Insert: "provides"
7. Page 11, line 1.
Following: "AND"
Insert: "other"
8. Page 15, line 15.
Following: second "AND"
Insert: "other"
9. Page 17, line 10.
Following: "AND"
Insert: "[section 2] and"
10. Page 17, line 11.
Following: "SECTION"
Insert: "of this section"

11. Page 17, line 13.
Strike: "1 YEAR"
Insert: "180 days"

12. Page 17, line 20.
Strike: "1 YEAR"
Insert: "180 days"

13. Page 17, line 25.
Strike: "485"
Insert: "300"

14. Page 23, line 10 through page 24, line 4.
Strike: section 7 in its entirety
Insert: "Section 7. Section 49-3-106, MCA, is amended to read:
"49-3-106. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:
(1) filing of complaints;
(2) conducting investigations of complaints;
(3) petitioning for a declaratory ruling, ~~as provided in~~
~~49-3-105;~~ and
(4) conduct of hearings."

And that this Free Conference Committee report be adopted.

For the Senate:

L. Pinoneault
Chair, Sen. Pinoneault

J. Mazurek
Sen. Mazurek

B. Brown
Sen. Brown

For the House:

Danella Russell
Chair, Rep. Russell

Brian A. Measure
Rep. Measure

Jim Rice
Rep. J. Rice

4-24-91
Ad. Coord.
SB 4-24-91 11:00
Sec. of Senate

ADOPT

REJECT

880632CC.Sji

ECGR #1
SB 199
880632CC.Sji

SENATE BILL NO. 199

INTRODUCED BY B. BROWN, YELLOWTAIL, J. RICE, STRIZICH
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE HOUSING
DISCRIMINATION LAWS TO MAKE THEM SUBSTANTIALLY EQUIVALENT TO
FEDERAL DISCRIMINATION LAW; PROVIDING PROCEDURES AND
REMEDIES FOR ENFORCEMENT OF HOUSING DISCRIMINATION LAWS;
PROHIBITING INTIMIDATION OR INTERFERENCE IN THE RIGHT TO BE
FREE FROM HOUSING DISCRIMINATION; ~~EXTENDING THE TIME TO FILE~~
~~ALL COMPLAINTS UNDER THE DISCRIMINATION LAWS TO BE~~
~~CONSISTENT WITH THE TIME LIMITS FOR COMPLAINTS OF HOUSING~~
~~DISCRIMINATION~~; PROVIDING PENALTIES; AND AMENDING SECTIONS
49-2-305, 49-2-501, 49-2-503, 49-2-506, 49-2-509, 49-3-304,
49-3-106, 49-3-306, ~~49-3-904~~ AND 49-4-212, MCA; AND
REPEALING SECTIONS 49-2-401 AND 49-3-105, MCA."

WHEREAS, the Legislature has previously included housing
discrimination as a subject of discrimination law in the
Montana Human Rights Act; and

WHEREAS, the housing discrimination laws in the Montana
Human Rights Act were modeled after the federal Fair Housing
Act of 1968; and

WHEREAS, in 1988, Congress substantially amended the
federal Fair Housing Act, enforced by the Department of

Housing and Urban Development; and

WHEREAS, the Montana Commission for Human Rights
processes housing discrimination complaints in Montana that
allege a violation of both the Montana Human Rights Act and
the federal Fair Housing Act; and

WHEREAS, the Montana Commission for Human Rights
receives a substantial portion of its funding from contracts
with the Department of Housing and Urban Development for
processing federal housing discrimination cases; and

WHEREAS, after January 13, 1992, the Department of
Housing and Urban Development will no longer contract with
any state fair housing agency that does not enforce a state
law providing rights and remedies substantially equivalent
to those provided by the federal Fair Housing Act; and

WHEREAS, the rights and remedies provided by the Montana
Human Rights Act are not presently substantially equivalent
to those provided by the federal Fair Housing Act.

THEREFORE, it is appropriate for the Legislature to
amend the housing discrimination laws in the Montana Human
Rights Act to maintain substantial equivalency with the
federal Fair Housing Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 49-2-305, MCA, is amended to read:

"49-2-305. Discrimination in housing -- exemptions. (1)



1 ~~Except when the distinction is based on reasonable grounds,~~
 2 ~~it IT is an unlawful discriminatory practice for the owner,~~
 3 ~~lessee, OR manager, HAVING THE RIGHT TO SELL, LEASE, OR RENT~~
 4 ~~A HOUSING ACCOMMODATION OR IMPROVED OR UNIMPROVED PROPERTY~~
 5 ~~or FOR ANY other person having the right to sell, lease, or~~
 6 ~~rent a housing accommodation or improved or unimproved~~
 7 ~~property:~~

8 (a) to refuse to sell, lease, or rent the housing
 9 accommodation or property to a person because of sex, race,
 10 creed, religion, color, age, familial status, physical or
 11 mental handicap, or national origin;

12 (b) to discriminate against a person because of sex,
 13 race, creed, religion, age, familial status, physical or
 14 mental handicap, color, or national origin in a term,
 15 condition, or privilege relating to the use, sale, lease, or
 16 rental of the housing accommodation or property;

17 ~~(c) to make a written or oral inquiry or record of the~~
 18 ~~sex, race, creed, religion, age, physical or mental~~
 19 ~~handicap, color, or national origin of a person seeking to~~
 20 ~~buy, lease, or rent the housing accommodation or property;~~
 21 ~~or~~

22 (C) TO MAKE AN INQUIRY ~~FOR THE PURPOSE OF~~
 23 ~~DISCRIMINATING ON THE BASIS OF THE SEX, RACE, CREED,~~
 24 ~~RELIGION, AGE, FAMILIAL STATUS, PHYSICAL OR MENTAL HANDICAP,~~
 25 ~~COLOR, OR NATIONAL ORIGIN OF A PERSON SEEKING TO BUY, LEASE,~~

1 OR RENT ~~THE~~ A HOUSING ACCOMMODATION OR PROPERTY FOR THE
 2 PURPOSE OF DISCRIMINATING ON THE BASIS OF SEX, RACE, CREED,
 3 RELIGION, AGE, FAMILIAL STATUS, PHYSICAL OR MENTAL HANDICAP,
 4 COLOR, OR NATIONAL ORIGIN;

5 ~~(d)(e)(D)~~ to refuse to negotiate for a sale or to
 6 OTHERWISE make UNAVAILABLE OR DENY a housing accommodation
 7 or property unavailable because of sex, race, creed,
 8 religion, age, familial status, physical or mental handicap,
 9 color, or national origin;

10 ~~(d)(E)~~ to represent to a person that a housing
 11 accommodation or property is not available for inspection,
 12 sale, or rental because of that person's sex, MARITAL
 13 STATUS, race, creed, religion, age, familial status,
 14 physical or mental handicap, color, or national origin when
 15 the housing accommodation or property is in fact available;
 16 or

17 ~~(e)(F)~~ for profit, to induce or attempt to induce a
 18 person to sell or rent a housing accommodation or property
 19 by representations regarding the entry or prospective entry
 20 into the neighborhood of a person or persons of a particular
 21 sex, MARITAL STATUS, race, creed, religion, age, familial
 22 status, physical or mental handicap, color, or national
 23 origin.

24 ~~(2) a private residence designed for single-family~~
 25 ~~occupancy in which sleeping space is rented to guests and in~~

1 ~~which the landlord also resides is excluded from the~~
2 ~~provisions of subsection (1).~~

3 (2) THE RENTAL OF SLEEPING ROOMS IN A PRIVATE RESIDENCE
4 DESIGNED FOR SINGLE-FAMILY OCCUPANCY IN WHICH THE LESSOR
5 OWNER ALSO RESIDES IS EXCLUDED FROM THE PROVISIONS OF
6 SUBSECTION (1), PROVIDED THAT THE LESSOR OWNER RENTS NO MORE
7 THAN THREE SLEEPING ROOMS WITHIN THE RESIDENCE.

8 (3) It is also an unlawful discriminatory practice to
9 make, print, or publish or cause to be made, printed, or
10 published any notice, statement, or advertisement that
11 indicates any preference, limitation, or discrimination that
12 is prohibited by subsection (1) or any intention to make or
13 have such a preference, limitation, or discrimination.

14 (4) It is an unlawful discriminatory practice for a
15 person to discriminate because of a physical or mental
16 handicap of a buyer, lessee, or renter; a person residing in
17 or intending to reside in or on the housing accommodation or
18 property after it is sold, leased, rented, or made
19 available; or any person associated with that buyer, lessee,
20 or renter:

21 (a) in the sale, rental, or availability of the housing
22 accommodation or property;

23 (b) in the terms, conditions, or privileges of a sale
24 or rental of the housing accommodation or property; or

25 (c) in the provision of services or facilities in

1 connection with the housing accommodation or property.

2 (5) For purposes of subsections (1) and (4),
3 discrimination because of physical or mental handicap
4 includes:

5 (a) refusal to permit, at the expense of the
6 handicapped person, reasonable modifications of existing
7 premises occupied or to be occupied by the handicapped
8 person if the modifications may be necessary to allow the
9 person full enjoyment of the premises, except that in the
10 case of a lease or rental, the landlord may, where it is
11 reasonable to do so, condition permission for a modification
12 on the lessor's or renter's agreement to restore the
13 interior of the premises to the condition that existed
14 before the modification, except for reasonable wear and
15 tear;

16 (b) refusal to make reasonable accommodations in rules,
17 policies, practices, or services when the accommodations may
18 be necessary to allow the person equal opportunity to use
19 and enjoy a housing accommodation or property; or

20 (c) (i) except as provided in subsection (5)(c)(ii), in
21 connection with the design and construction of a covered
22 multifamily housing accommodation, a failure to design and
23 construct the housing accommodation in a manner that:

24 (A) ~~THE HOUSING ACCOMMODATION HAS~~ PROVIDES AT LEAST ONE
25 ACCESSIBLE BUILDING ENTRANCE ON AN ACCESSIBLE ROUTE;

98

(A)(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by handicapped persons;

(B)(C) provides THAT ALL doors designed to allow passage into and within all premises within the housing accommodation ARE sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(E)(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual in a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered

multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization;

1 or other service, organization, or facility relating to the
 2 business of selling, leasing, or renting housing
 3 accommodations or property or to discriminate against the
 4 person in the terms or conditions of access, membership, or
 5 participation because of sex, race, creed, religion, age,
 6 familial status, physical or mental handicap, color, or
 7 national origin.

8 (9) It is an unlawful discriminatory practice to
 9 coerce, intimidate, threaten, or interfere with a person in
 10 the exercise or enjoyment of or because of his having
 11 exercised or enjoyed or having aided or encouraged any other
 12 person in the exercise or enjoyment of a right granted or
 13 protected by this section.

14 (4)(10) The prohibitions of this section against
 15 discrimination because of age and familial status do not
 16 extend to housing for older persons. "Housing for older
 17 persons" means housing:

18 (a) provided under any state or federal program
 19 specifically designed and operated to assist elderly
 20 persons;

21 (b) intended for, and solely occupied by, persons 62
 22 years of age or older; or

23 (c) intended and operated for occupancy by at least one
 24 person 55 years of age or older per unit in accordance with
 25 the provisions of 42 U.S.C. 3605(b)(2)(C) and (3) and 24

1 C.F.R. 100.304, as those sections read on October 1, 1989.

2 (5)(11) The prohibitions of this-section SUBSECTION (1)
 3 against discrimination because of age and familial status do
 4 not extend to rooms or units in dwellings containing living
 5 quarters occupied or intended to be occupied by no more than
 6 two families living independently of each other, if the
 7 owner actually maintains and occupies one of the living
 8 quarters as his residence.

9 (6)(12) For purposes of this section, "familial status"
 10 means having a child or children who live or will live with
 11 a person. A distinction based on familial status includes
 12 one that is based on the age of a child or children who live
 13 or will live with a person."

14 NEW SECTION. Section 2. Procedures and remedies for
 15 enforcement of housing discrimination laws. (1) A COMPLAINT
 16 MAY BE FILED WITH THE COMMISSION BY OR ON BEHALF OF A PERSON
 17 CLAIMING TO BE AGGRIEVED BY ANY DISCRIMINATORY PRACTICE
 18 PROHIBITED BY 49-2-305. THE COMPLAINT MUST BE IN WRITTEN
 19 FORM AND MUST BE FILED WITH THE COMMISSION WITHIN 1 YEAR
 20 AFTER THE ALLEGED UNLAWFUL DISCRIMINATORY PRACTICE OCCURRED
 21 OR WAS DISCOVERED.

22 (1)(2) (a) Except as provided in subsection (1)(b)
 23 (2)(B), if the commission, in a hearing under 49-2-505,
 24 finds that a person, institution, entity, or agency against
 25 whom a complaint was filed under this part has engaged in a

1 discriminatory practice in violation of 49-2-305, the
 2 commission may, in addition to the remedies AND INJUNCTIVE
 3 AND OTHER EQUITABLE RELIEF provided by 49-2-506, to
 4 vindicate the public interest, assess a civil penalty:

5 (i) in an amount not exceeding \$10,000 if the
 6 respondent has not been found to have committed any prior
 7 discriminatory housing practice in violation of 49-2-305;

8 (ii) in an amount not exceeding \$25,000 if the
 9 respondent has been found to have committed one other
 10 discriminatory housing practice in violation of 49-2-305
 11 during the 5-year period ending on the date of the filing of
 12 the complaint; and

13 (iii) in an amount not exceeding \$50,000 if the
 14 respondent has been found to have committed two or more
 15 discriminatory housing practices in violation of 49-2-305
 16 during the 7-year period ending on the date of the filing of
 17 the complaint.

18 (b) If the acts constituting the discriminatory housing
 19 practice that is the object of the complaint are committed
 20 by the same natural person who has been previously found to
 21 have committed acts constituting a discriminatory housing
 22 practice, the civil penalties provided in subsections
 23 ~~(1)(a)(iii)~~ and ~~(1)(a)(iii)~~ (2)(A)(II) AND (2)(A)(III) may be
 24 imposed without regard to the period of time within which
 25 any prior discriminatory housing practice occurred.

1 ~~(2)(3)~~ In the case of an order with respect to a
 2 discriminatory housing practice in violation of 49-2-305
 3 that occurred in the course of a business subject to
 4 licensing or regulation by a governmental agency, the
 5 commission shall, no later than 30 days after the date of
 6 the issuance of the order or, if the order is judicially
 7 reviewed, no later than 30 days after the order is in
 8 substance affirmed:

9 (a) send copies of the findings of fact, the
 10 conclusions of law, and the order to the licensing or
 11 regulatory agency; and

12 (b) recommend to the licensing or regulatory agency
 13 appropriate disciplinary action, including, where
 14 appropriate, the suspension or revocation of the license of
 15 the respondent.

16 ~~(3)(4)~~ (a) When a complaint is filed under 49-2-305, a
 17 complainant, respondent, or aggrieved person on whose behalf
 18 the complaint was filed may elect to have the claims decided
 19 in a civil action in lieu of a hearing under 49-2-505. The
 20 election must be made no later than 20 days after receipt by
 21 the electing person of service of notice of certification
 22 for hearing under 49-2-505. The person making the election
 23 shall give notice to the commission and to all other
 24 complainants and respondents to whom the complaint relates.
 25 Within 30 days after the election is made, the commission

1 shall commence a civil action in an appropriate district
 2 court on behalf of the aggrieved person if the commission
 3 staff has made a finding that the allegations of the
 4 complaint are supported by substantial evidence. If the
 5 commission staff has made a finding that the allegations of
 6 the complaint are not supported by substantial evidence, the
 7 complainant may commence a civil action in an appropriate
 8 district court in accordance with subsection ~~(4)~~ (5). An
 9 aggrieved person with respect to the issues to be determined
 10 in a civil action brought by the commission staff may
 11 intervene in the action.

12 (b) The commission may not continue administrative
 13 proceedings on a complaint after an election is made in
 14 accordance with subsection ~~(3)(a)~~ (4)(A).

15 ~~(4)(5)~~ (a) An aggrieved person may commence a civil
 16 action in an appropriate district court within 2 years after
 17 an alleged unlawful discriminatory practice under 49-2-305
 18 occurred or was discovered or within 2 years of the breach
 19 of a conciliation agreement entered into under 49-2-504 in a
 20 case alleging a violation of 49-2-305. The computation of
 21 the 2-year period does not include any time during which an
 22 administrative proceeding under this title was pending with
 23 respect to a complaint alleging a violation of 49-2-305. The
 24 tolling of the time limit for commencing a civil action does
 25 not apply to actions arising from breach of a conciliation

1 agreement.

2 (b) An aggrieved person may commence a civil action
 3 under this subsection for a violation of 49-2-305 whether or
 4 not a complaint has been filed under 49-2-501 and without
 5 regard to the status of a complaint filed with the
 6 commission except as provided in subsection ~~(4)(d)~~ (5)(D).
 7 If the commission has obtained a conciliation agreement with
 8 the consent of the aggrieved person, an action may not be
 9 filed under this subsection by the aggrieved person
 10 regarding the alleged violation of 49-2-305 that forms the
 11 basis for the complaint except for the purpose of enforcing
 12 the terms of the agreement.

13 (c) The commission may not continue administrative
 14 proceedings on a complaint after the beginning of a trial of
 15 a civil action commenced by the aggrieved party under this
 16 subsection ~~(4)~~ (5) seeking relief with respect to the same
 17 alleged violation of 49-2-305.

18 (d) An aggrieved person may not commence a civil action
 19 under this subsection ~~(4)~~ (5) with respect to an alleged
 20 violation of 49-2-305 if the commission has commenced a
 21 hearing on the record under 49-2-505 regarding the same
 22 complaint.

23 (e) Upon application by a person alleging a violation
 24 of 49-2-305 in a civil action under this subsection ~~(4)~~ (5)
 25 or by a person against whom the violation is alleged, the

1 court may:

2 (i) appoint an attorney for the applicant; or

3 (ii) authorize the commencement or continuation of a
4 civil action without the payment of fees, costs, or security
5 if, in the opinion of the court, the applicant is
6 financially unable to bear the costs of the civil action.

7 (f) Upon timely application, the commission may
8 intervene in a civil action brought under this subsection
9 ~~(4)~~ (5) if the commission certifies that the case is of
10 general public importance. Upon intervention, the commission
11 may obtain the same relief that would be available to the
12 commission under subsection ~~(6)~~ (7).

13 ~~(5)~~ (6) If the court finds that a person, institution,
14 entity, or agency against whom a complaint was filed under
15 this section has engaged in a discriminatory practice in
16 violation of 49-2-305, the court may, in addition to the
17 other remedies AND INJUNCTIVE AND OTHER EQUITABLE RELIEF
18 provided under 49-2-506, award punitive damages. The court
19 may also award attorney fees to the prevailing party.

20 ~~(6)~~ (7) (a) Whenever the commission has reasonable cause
21 to believe that a person or group of persons is engaged in a
22 pattern or practice in violation of 49-2-305 or that a group
23 of persons has been discriminated against in violation of
24 49-2-305 and the denial raises an issue of general public
25 importance, the commission may commence a civil action in an

1 appropriate district court. The commission may also commence
2 a civil action in any appropriate district court for relief
3 regarding breach of a conciliation agreement in a case
4 regarding an alleged violation of 49-2-305 if the commission
5 is a party to the agreement.

6 (b) The commission may file a civil action under this
7 subsection ~~(6)~~ (7) within 18 months after the alleged breach
8 of the conciliation agreement or unlawful discriminatory
9 practice occurred or was discovered.

10 (c) In a civil action under this subsection ~~(6)~~ (7),
11 the court may, in addition to the remedies provided under
12 49-2-506, assess a civil penalty against the respondent:

13 (i) in an amount not exceeding \$50,000 for a first
14 violation; and

15 (ii) in an amount not exceeding \$100,000 for any
16 subsequent violation.

17 (d) Upon timely application, a person may intervene in
18 a civil action under this subsection ~~(6)~~ (7) that involves
19 an alleged violation of 49-2-305 with respect to which the
20 intervenor is an aggrieved person.

21 ~~(7)~~ (8) Civil penalties under this section must be paid
22 to the state treasurer to be deposited in an account in the
23 state special revenue fund to be used by the commission for
24 housing discrimination enforcement.

25 **Section 3.** Section 49-2-501, MCA, is amended to read:

1 "49-2-501. Filing complaints. (1) A complaint may be
2 filed by or on behalf of any person claiming to be aggrieved
3 by any discriminatory practice prohibited by this chapter.
4 The complaint must be in the form of a written, verified
5 complaint stating the name and address of the person,
6 educational institution, financial institution, or
7 governmental entity or agency alleged to have engaged in the
8 discriminatory practice and the particulars of the alleged
9 discriminatory practice. The commission staff may file a
10 complaint in like manner when a discriminatory practice
11 comes to its attention.

12 (2) (a) Except as provided in ~~{SECTION 2}~~ AND [SECTION
13 2] AND subsection (2)(b) ~~OF THIS SECTION OF THIS SECTION~~, a
14 complaint under this chapter must be filed with the
15 commission within ~~180-days 1-year 180-DAYS 1-YEAR~~ 180 DAYS
16 after the alleged unlawful discriminatory practice occurred
17 or was discovered.

18 (b) If the complainant has initiated efforts to resolve
19 the dispute underlying the complaint by filing a grievance
20 in accordance with any grievance procedure established by a
21 collective bargaining agreement, contract, or written rule
22 or policy, the complaint may be filed within ~~180-days 1-year~~
23 ~~180--DAYS 1--YEAR~~ 180 DAYS after the conclusion of the
24 grievance procedure if the grievance procedure concludes
25 within 120 days after the alleged unlawful discriminatory

1 practice occurred or was discovered. If the grievance
2 procedure does not conclude within 120 days, the complaint
3 must be filed within 300 ~~485 300 485 300~~ days after the
4 alleged unlawful discriminatory practice occurred or was
5 discovered.

6 (c) Any complaint not filed within the times set forth
7 herein may not be considered by the commission."

8 **Section 4.** Section 49-2-503, MCA, is amended to read:

9 "49-2-503. Temporary relief by court order. ~~{1}~~ At any
10 time after a complaint is filed under this chapter alleging
11 ~~an-unlawful-discriminatory-practice, the-commission-may-file~~
12 ~~a-petition-in-the-district-court-in-the-county-in-which--the~~
13 ~~subject--of-the-complaint-occurs-or-in-the-county-in-which-a~~
14 ~~respondent-resides-or-transacts-business-seeking-appropriate~~
15 ~~temporary-relief-against-this-practice, including--an--order~~
16 ~~restraining--the--respondent--from-interfering-in-any-manner~~
17 ~~with-an-order-the-commission-may-enter-with-respect--to--the~~
18 ~~complaint.~~

19 ~~{2}--The--court--has--the--power--to-grant-the-temporary~~
20 ~~relief-or-restraining-order-it-considers--just--and--proper.~~
21 ~~However,--no-relief-or-order-extending-beyond-14-days-may-be~~
22 ~~granted-except-by--consent--of--the--respondent--or--upon--a~~
23 ~~finding--by--the--court--that--there--is-reasonable-cause-to~~
24 ~~believe-that-the-respondent-has--engaged--in--discriminatory~~
25 ~~practices, a district court may, upon the application of the~~

154

commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

Section 5. Section 49-2-506, MCA, is amended to read:

"49-2-506. Procedure upon a finding of discrimination.

(1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The Except as provided in [section 2], the order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years."

Section 6. Section 49-2-509, MCA, is amended to read:

"49-2-509. Filing a complaint in district court. (1)

Except as provided in subsection (2) or with respect to complaints alleging a violation of 49-2-305, the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If Except as provided in [section 2], if the claimant fails to

petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim shall be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."

~~Section 7--Section 49-3-304, MEA, is amended to read:~~

~~"49-3-304--Filing complaints--(1) Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within 180 days 1-year after the alleged unlawful discriminatory practice occurred or was discovered. (2)--If the complainant has initiated efforts to resolve~~

104

the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days 1 year after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 485 days after the alleged unlawful discriminatory practice occurred or was discovered.

{3}--A complaint not filed within the times set forth in this section may not be considered by the commission."

SECTION 7. SECTION 49-3-304, MCA, IS AMENDED TO READ:

"49-3-304. Filing complaints. (1) Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within 180 days 1 year days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days 1 year after the conclusion of the grievance procedure if the

grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

{3}--A complaint not filed within the times set forth in this section may not be considered by the commission."

SECTION 7. SECTION 49-3-106, MCA, IS AMENDED TO READ:

"49-3-106. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

- (1) filing of complaints;
- (2) conducting investigations of complaints;
- (3) petitioning for a declaratory ruling, as provided in 49-3-105; and
- (4) conduct of hearings."

Section 8. Section 49-3-306, MCA, is amended to read:

"49-3-306. Temporary relief by court order. {1} At any time after a complaint is filed with the commission under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or

in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

NEW SECTION. Section 9. Intimidation or interference

in the right to be free from housing discrimination -- penalties. (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because he is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because he is or has been, or in order to discourage him or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because he is or has lawfully participated in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection

1 (1):

2 (a) shall be fined not more than \$1,000 or imprisoned
3 for not more than 1 year, or both;

4 (b) if bodily injury results, shall be fined not more
5 than \$10,000 or imprisoned for not more than 10 years, or
6 both; or

7 (c) if death results, shall be subject to imprisonment
8 for any term of years or for life.

9 **Section 10.** Section 49-4-212, MCA, is amended to read:

10 "49-4-212. Access to housing accommodations. ~~{1}~~ Blind,
11 visually handicapped, and deaf persons are entitled to as
12 full and equal access as other members of the general public
13 to any housing accommodation offered for compensation in
14 this state.

15 ~~{2}--Nothing--in--this--section--requires--a--person--renting,~~
16 ~~leasing,--or--providing--real--property--for--compensation--to~~
17 ~~modify--his--property--in--any--way--or--provide--a--higher--degree--of~~
18 ~~care--for--a--blind,--visually--handicapped,--or--deaf--person--than~~
19 ~~for--a--person--who--is--not--so--disabled."~~

20 NEW SECTION. SECTION 11. REPEALER. SECTIONS 49-2-401
21 AND 49-3-105, MCA, ARE REPEALED.

22 NEW SECTION. Section 12. Codification instruction. (1)
23 [Section 2] is intended to be codified as an integral part
24 of Title 49, chapter 2, part 5, and the provisions of Title
25 49, chapter 2, part 5, apply to [section 2].

1 (2) [Section 9 8 9] is intended to be codified as an
2 integral part of Title 49, chapter 2, part 6, and the
3 provisions of Title 49, chapter 2, part 6, apply to [section
4 9 8 9].

-End-